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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 17

FRED F. EDWARDS,

Appellant,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA.

BRIEF OF JOHN H. TOLAN FOR THE SELECT COMMITTEE OF THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES, APPOINTED PURSUANT TO HOUSE RESOLUTION NO. 63, APRIL 22, 1940, TO INVESTIGATE INTERSTATE MIGRATION OF DESTITUTE CITIZENS, AS AMICUS CURIAE.

JOHN H. TOLAN,
as AMICUS CURIAE.

WM. W. SILVERMAN,
Washington, D. C.,
of Counsel.

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Preliminary Statement.

The statute[1] in question enacted by the State of California, typical of the anti-migratory statutes enacted in twenty-eight States—the text and analysis of which are contained in the Supplement to this brief—provides: "Every person, firm, or corporation, or officer or agent thereof that brings or assists in bringing into the state any *indigent* person, who is not a resident of the state, knowing him to be an *indigent* person, is guilty of a misdemeanor."

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[1] Cal. Welfare and Institutions Code (Deering, 1937), sec. 2615.

This enactment is based on an earlier law,[2] amended in 1931,[3] which reads: "Every person, firm or corporation bringing into or leaving within, or procuring the bringing into or the leaving within, or aiding in the bringing into or leaving within of any *pauper* or *poor* or *indigent* or incapacitated or incompetent person * * * knowing him to be such *pauper, poor* or *indigent*, or incapacitated or incompetent person, shall be guilty of a misdemeanor."[4]

As authority for the proposition that a State under its police powers may exclude *paupers* from its boundaries, Counsel for appellee and respondent in this case, arguing for the validity of the statute in question submits the case *of The Mayor of New York* v. *Miln*, 11 Pet. 102 (1837).[5] Counsel also contends:[6]

> "It is unfortunate that Section 2 of the statute [involved in the *Miln* case] which provided that the master of the vessel should be bound in sureties in a sum not to exceed $300.00 for every passenger in order that the city be saved harmless from the possible maintenance of such persons was not actually passed upon. It was not counted upon in the original declaration which was demurred to and certified to the Circuit Court and finally before the Supreme Court. Section 2 of the New York statute was clearly anti-pauper legislation, and although Justice Barbour's opinion seems to consider the fact as a whole, nevertheless, Section 1 which

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[2] Cal. Stats. (1901), c. 210, sec. 3.

[3] Cal. Gen. L. (Deering, 1931), act 5814, sec. 3.

[4] The principal difference between the two statutes being that the words, "*pauper* or *poor* or *indigent* or incapacitated or incompetent person" have been deleted from the earlier enactment. In their stead has been substituted the sole term, "indigent". Whether the term "indigent" was intended by the legislature as covering the other classes of persons cannot be determined. Also, what the definition of "indigent" may mean cannot be determined, as the term has never been legally defined.

[5] See brief of counsel for appellee and respondent, dated April 21, 1941, p. 3.

[6] Ibid., p. 5. Italics supplied.

merely required *the report of the master as to all his passengers was the only section actually before the Court*, and the consideration of which was necessary to the decision. Hence, what, but for a limited certification would have been a direct holding on the right of a State to exclude *paupers* under its police power is relegated to the status of very strong dictum. *We urge that in view of the unequivocal opinion of the Court in the Miln case* there can be little doubt that had the last mentioned issue been squarely before the Court its validity would likewise have been favorably passed upon."

On page six of the said brief, Counsel continues:

"Following the *Miln* case the Supreme Court on numerous occasions reiterated the right of a state in the exercise of its police power to exclude *paupers* from its limits."

For this proposition, Counsel cites: "Hannibal & St. Joseph R. R. Co. *v.* Husen (1878), 95 U. S. 465, 24 L. Ed. 527; In re Ah Fong (1874), 3 Saw. 144, 1 Fed. Cases 213; Henderson *v.* Wickham (1875), 92 U. S. 259, 23 L. Ed. 543; Chy Lung *v.* Freeman (1876), 92 U. S. 275, 23 L. Ed. 550; Passenger Cases, supra, 7 How. 283; Plumly *v.* Mass. (1894), 155 U. S. 461; Missouri K. and T. Ry. *v.* Haber (1898), 169 U. S. 613."[7]

Let us first briefly consider each of the cases in light of Counsel's contention:

First, in the *Henderson* case,[8] Justice Miller, delivering the opinion for the Court, argued that the *Miln* case was strictly limited to the proposition that requiring a report of the master of a ship as to all of his passengers, *without more*, fell within the police powers of the States and was

[7] Ibid., p. 6.

[8] 92 U. S. 259, 266 (1875)

not in conflict with the Federal Constitution. But, continues Justice Miller:

> "From this decision Mr. Justice Story dissented, and in his opinion stated that Chief Justice Marshall, who had died between the first and second argument of the case, fully concurred with him in the view that the statute of New York was void, because it was a regulation of commerce forbidden to the states."[9]

Nevertheless, in spite of the strong dissent, this was held to be the law until the *Passenger Cases*, reported in *7 How. 283*, came before this Court for consideration, involving the section of the statute not passed upon in the *Miln* case. This section of the statute authorized the health commissioner to demand, and if not paid, to sue for and recover, from the master of every vessel arriving in the port of New York from a foreign port one dollar and fifty cents for each cabin passenger, and one dollar for each steerage passenger.

The defendant, Smith in that case, who was sued for the sum of two hundred ninety-five dollars for refusing to pay for two hundred ninety-five steerage passengers, demurred to the declaration on the ground that the act was contrary to the Constitution of the United States and, therefore, void. It was held in that case, at the January term, 1849, Justice Miller continues: " 'that the statute was repugnant to the Constitution and laws of the United States and therefore void.' 7 How. 572."[10]

Immediately after this decision the State of New York amended the statute on that subject with a view, no doubt, to avoid the constitutional objection. And, in declaring this statute, as amended, *containing provisions similar to those upheld in the Miln case, invalid*, Justice Miller concludes:

> "We are of opinion that this whole subject has been confided to Congress by the Constitution; that Congress

[9] Ibid.

[10] Ibid. p. 26[illegible].

> can more appropriately and with more acceptance exercise it than any other body known to our law, state or national; that by providing a system of laws in these matters, applicable to all ports and to all vessels, a serious question, which has long been matter of contest and complaint, may be effectually and satisfactorily settled.
>
> "Whether, in the absence of such action the States can or how far they can, by appropriate legislation, protect themselves against actual paupers, vagrants, criminals and diseased persons arriving in their territory from foreign countries, *we do not decide.*" [11]

The holdings both in this and the *Passenger Cases* are far from that which Counsel for appellee contends, to wit:

"Hence, what, but for a limited certification, would have been a direct holding on the right of a State to exclude paupers under its police power is relegated to the status of very strong dictum. We urge that in view of the unequivocal opinion of the Court in the *Milu* case, there can be little doubt that had the last mentioned issue been squarely before the Court, its validity would likewise have been favorably passed upon." [12]

As to the *Chy Lung* case,[13] also cited by Counsel for the proposition that a State in the exercise of its police power may exclude paupers from its limits, Justice Miller, again delivering the opinion for the Court, says:

> "It is a most extraordinary statute. It provides that the Commissioner of Immigration is 'to satisfy himself whether or not any passenger who shall arrive in the State by vessels from any foreign port or place (who is not a citizen of the United States) is lunatic, idiotic, deaf, dumb, blind, crippled, or infirm, and is not accompanied by relatives who are able and willing to support him, or is likely to become a public charge, or has been a *pauper* in any other country, or is from sickness or

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[11] Ibid., pp. 274, 275.

[12] Counsel's brief, *supra*, p. 5.

[13] 92 U. S. 275, 277 (1875).

disease (existing either at the time of sailing from the port of departure or at the time of his arrival in the State) a public charge, or likely soon to become so, or is a convict, criminal, or a lewd or debauched woman;' and no such person shall be permitted to land from the vessel, unless the master or owner or a consignee shall give a separate bond in each case, conditioned to save harmless every county, etc. * * *

"It is hardly possible to conceive a statute more skillfully framed to place in the hands of a single man the power to prevent entirely vessels engaged in a foreign trade * * * to compel them to submit to systematic extortion of the grossest kind.

"The Commissioner has but to go aboard a vessel filled with passengers ignorant of our language and our laws, and without trial or hearing or evidence, but from the external appearance of persons with whose former habits he is unfamiliar, to point with his finger to twenty, as in this case, or a hundred if he chooses, and say to the master, 'These are idiots, these are *paupers*, these are convicted criminals, these are lewd women and these others are debauched women. I have here a hundred blank forms of bonds, printed. I require you to fill me up and sign each of these for $500 in gold, and that you furnish me two hundred men, residents of this State, and of sufficient means as sureties on these bonds. I charge you $5.00 in each case for preparing the bond and swearing your sureties; and I charge you seventy-five cents each for examining these passengers and all others you have on board. If you don't do this you are forbidden to land your passengers under a heavy penalty. But I have the power to commute with you for all this for any sum I may choose to take in cash. I am open to an offer; for you must remember that twenty per cent of all I can get out of you goes into my own pocket, and the remainder into the treasury of California." [14]

[14] Ibid., p. 278

Justice Miller then concludes: "In any view which we can take of this statute, it is in conflict with the Constitution of the United States and therefore void." [15]

The *Husen* case,[16] cited by Counsel, involved a Missouri statute dealing not with paupers, but with the importation of "Texas, Mexican or Indian Cattle." In declaring this Act invalid, the Court said:

> "* * * While we unhesitatingly admit that a State may pass sanitary laws and laws for the protection of life, liberty, health, or property within its borders; while it may prevent persons and animals suffering under contagious or infectious diseases, or convicts, etc. from entering the State; while for the purpose of self-protection it may establish quarantine, and reasonable inspection laws, it may not interfere with transportation into or through the State, *beyond what is absolutely necessary for its self-protection.* It may not, under the cover of exerting its police powers, substantially prohibit or burden either foreign or interstate commerce * * *" [17]
>
> "Tried by this rule, the statute of Missouri is a plain intrusion upon the exclusive domain of Congress. It is not a quarantine law. It is not an inspection law. It says to all natural persons and to all transportation companies, 'You shall not bring into the State any Texas cattle or any Mexican cattle or Indian cattle, between March 1 and Dec. 1 in any year, no matter whether they are free from disease or not, no matter whether they may do an injury to the inhabitants of the State or not; and if you do bring them in, even for the purpose of carrying them through the State without unloading them, you shall be subject to extraordinary liabilities.' Such a statute, we do not doubt, it is beyond the power of a State to enact. To hold otherwise would be to ignore one of the leading objects which the

[15] Ibid., p. 281.

[16] *Railroad Co.* v. *Husen*, 95 U. S. 465 (1877).

[17] Ibid., p. 472.

Constitution of the United States was designed to secure." [18]

This holding was also cited by Counsel for the proposition that a State under its police power may exclude *paupers* from coming within its limits. And, as to the remaining cases cited by Counsel for this proposition, The *Plumly* case [19] deals with the sale of oleomargarine, which, of course, is not in point; the *Hal* v case [20] deals with a Kansas statute, prohibiting the importation of diseased cattle; it, too, has no bearing on the proposition that a state may exclude *paupers*. And as to the *Ah Fong* case,[21] the Court, in holding the California Chinese Exclusion Act invalid, said: "I am aware of the very general feeling prevailing in the State against the Chinese, and in opposition to the extension of any encouragement to their immigration hither * * * *Admitting that there is ground for this feeling, it does not justify any legislation for their exclusion* * * * It follows, from the views just expressed, that the petitioner must be discharged from further restraint of her liberty; and it is so ordered."

Thus, case for case cited, the holdings of each can hardly be reconciled with Counsel's contention: "Following the *Miln* case the Supreme Court on numerous occasions reiterated the right of a State in the exercise of its police power to exclude *paupers* from its limits." [22]

True, the only case of some support to appellee's cause is the *Miln* case. However, that case, if not directly, was impliedly overruled by the *Henderson* case, *supra*. This Court has never squarely passed upon the question as to whether a State, may, in the exercise of its police power,

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[18] Ibid., p. 473.

[19] *Plumly* v. *Massachusetts*, 155 U. S. 461 (1894).

[20] *Missouri K. & T. Ry.* v. *Haber*, 169 U. S. 613 (1898).

[21] *In re Ah Fong*, 1 Fed. Cases 213, 217, 218 (1874).

[22] Counsel's brief, *supra*, p. 6.

exclude paupers from its limits. There is, however, ample authority in the State courts to the effect that a State may prevent persons who are lunatics, idiots, vagrants, aged, or infirm, and who are without any visible means of support from coming within its limits.[23] But, unfortunately, in most of these cases, the decisions do not turn on whether these persons are *paupers* or *indigents*, but rather on the question of a particular locality's support or non-support of these people. In each of these cases, exclusion is narrowly limited to those who are physically or mentally handicapped and without some means of support; and, in no case has this doctrine been expanded to include persons who are not imbecilic, who are not drunkards, who are not vagrants or tramps; who are not diseased, who are not aged or infirm, nor as to persons who have always worked, persons who are willing to work, persons who are able to work and who are competent in every other respect, except that they are temporarily without work and without funds.

Although many cases can be cited for the broad and vague doctrine of exclusion, no single decision can be cited for the proposition *that a pauper is a person who is without funds or means of support, and no more;* and, in each case all through the ages, there has always been a traditionally close association in the application of the term *pauper* with persons who are permanently disabled and without some means of support.

The Supreme Court of Nebraska[24] defined *pauper* as a person who is unable to earn a livelihood in consequence of any bodily infirmity, *and* who is without means, and who is without kindred of sufficient means to support him. In

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[23] *Sullivan County* v. *Grafton County*, 55 N. H. 339 (1875); *The Town of Barnet* v. *John Ray and Henry Walker*, 33 Vt. 205 (1860); *Town of Stratford* v. *Sanford*, 9 Conn. 275 (1832); *Inhabitants of Palmer* v. *Horace P. Wakefield*, 102 Mass. 214 (1869); *The Inhabitants of Sturbridge* v. *Jonathan Winslow*, 38 Mass. 83 (1838); *State* v. *Cornish*, 66 N. H. 329 (1890).

[24] *Muller* v. *Banner County*, 127 Neb. 600, 256 N. W. 639 (1934).

Washington,[25] a *poor person* or *pauper* was held to be a person without means of support or destitute and dependent on charity, but not necessarily one merely without financial resources.[26] And, Iowa, the only State defining the term by statute [Ia. Code (1939), sec. 3828.073], construes "poor persons" to be those ' who have no property, exempt or otherwise, and are unable, because of physical or mental disabilities, to earn a living by labor."

Although the discussion, thus far, has been confined to the question of excluding *paupers*, we have done so purposely, since Counsel for appellee significantly bases his contention solely on that proposition, to wit: "We submit that this right of States to protect themselves against the influx of *paupers* is one of the inherent rights of a State not delegated by the Constitution or any amendment thereof." [27] Throughout all of his discussion, Counsel avoids the use of the term *indigent*, even though by amendment, the State of California dropped from the earlier enactment on this subject the terms "*pauper* or *poor* or *indigent* or *incapacitated* or *incompetent person*", and has substituted for these terms the single word, *indigent*.

This change gives rise to many questions. Why has the California State Legislature amended the statute, similar in every other respect to the earlier law, except that the controlling language pertaining to the classes of persons prohibited from being brought into the State, in the new law,

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[25] *Spokane County* v. *Arvin*, 169 Wash. 349, 13 Pac. (2d) 1089, 1090 (1932).

[26] See also: *Citizens and Southern Natl. Bank* v. *Cook*, 182 Ga. 240, 185 S. E. 318 (1936); *In re Barnes*, 119 Pa. Super. 533, 180 Atl. 718 (1935); *Symes Arlington Hospital* v. *Town of Arlington*, 292 Mass. 162, 197 N. E. 677 (1935); *Brown* v. *Van Keuren*, 340 Ill. 118, 172 N. E. 1 (1930); *Allegheny County* v. *Pittsburgh*, 281 Pa. 300, 127 Atl. 72 (1924); *Newark Township* v. *Kearny*, 99 N. J. 42, 155 N. W. 797 (1915); *Weeks* v. *Mansfield*, 84 Conn. 544, 80 Atl. 784 (1911); *Holburn* v. *Pfanmiller's Admr.*, 114 Ky. 831, 71 S. W. 940 (1903); *In re Hoffen's Estate*, 70 Wis. 522, 36 N. W. 407 (1888); *Walbridge* v. *Walbridge*, 46 Vt. 617 (1874); *City of Charlestown* v. *Inhabitants of Groveland*, 81 Mass. 15 (1860); *Hutchings* v. *Thompson*, 64 Mass. 238 (1852).

[27] Brief for appellee, p. 2.

is less definite and more obscure? Is *indigent* alone to be used to describe all of the persons enumerated in the earlier statute? Is this term to be used interchangeably with *pauper* and the others? Can this term be indiscriminately applied to all persons the State may desire to brand as "undesirables"? Thus, can California or any other State preclude *indigents* from coming within its limits, for without defining so vague and indefinite a term, the State imposes the duty and burden upon persons bringing others into the State to determine whether persons so brought are or are not *indigent?*

However, in spite of the difficulties that may arise with respect to the interpretation of any of these terms, we contend that both the old and the new statutes are equally indefinite and obscure; and, further contend that it is not now for this Court to decide who is or is not a *pauper* or *indigent*. In fact, any further attempt to pursue this discussion revolving around the definition of such vague and ambiguous terms would only tend to clog and confuse the more important aspects of the questions presented by this case to this Court for determination. Unless it be possible to define *beyond all doubt* and in terms so clear as not to be subject to controversy, varying interpretations and dispute, any course by this Court, any other court or any legislature to stamp and stigmatize groups of persons as falling within this or that category or "caste" would not only be dangerous but suicidal to the principles upon which this government is founded. We are cognizant and too well aware of the perils and hazards involved, even with statutes less vague and evasive, when officials during a particularly critical or chaotic period have embarked on "fishing expeditions" or "witch-hunts" to brand persons and groups as "untouchables" or "undesirables".

The instant case presents only one problem and but one question to this Court for determination. *Can or cannot a person such as Mr. Duncan, who has worked all of his life,*

who has always had some means of support, who is able to work, who is willing to work, who is in search for work, but who is now temporarily without work and funds, be precluded by the State of California from being brought within its limits in search of employment?

The State of California has held Mr. Duncan to be *indigent*, and since under the statute in question, the State seeks to prevent him from being brought within its limits even though he is employable,[28] and incapable, under any circumstances for a period of 3 years, of becoming a public charge upon the State,[29] we contend unequivocally that under such standards and by virtue of such interpretation, the California Act is unconstitutional, and must, therefore, be declared to be null and void. We do so for the following reasons:

Privileges and Immunities Provisions.

First: the statute is in viciation of the privileges and immunities clauses[30] of the Constitution of the United States, guaranteeing that the citizens of each State shall be entitled to all privileges and immunities of the citizens in the several States and of the United States.

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[28] Mr. Duncan was employed with W. P. A. prior to his coming to California in search for other employment. Under W. P. A. provisions pertaining to employment, sec. 15 provides: "In considering employment of persons upon work projects prosecuted under the appropriations contained in this joint resolution, the agency providing the employment shall determine whether such persons are able to perform the work on work projects to which they can be assigned and no person shall be employed or retained for employment on any such project whose work habits are such or work record shows that he is incapable of performing satisfactorily the work to which he may be assigned on the project." [54 Stat. 611, Public Resolution 88, 76th Congress, 3d Sess.]

[29] To become a public charge, one must be a resident of the State. To become a resident of the State, under its settlement laws, one must have lived continuously in the State for a period of three years with intent to make it his home. [Cal. Welf. and Inst. Code (Deering, 1937), sec. 2555.]

[30] Art. IV, sec. 2; Fourteenth Amendment.

Can the proponents for this type of anti-migratory legislation contend that States may prevent the free ingress and egress of citizens going to and from the several States of the United States in search for business, trade, industry or employment?

We know that the rapid and unprecedented growth and development of this country's economy has been in no small measure due to a free and unfettered flow of capital and labor from one part of the country to another.

Opportunities for the investment of capital and employment of labor have prevailed during our epochal periods of expansion in different parts of the country. At one time such opportunities prevailed in the south. During another period, such opportunities prevailed in the north; while during other periods, they were in the middle-west, the southwest and far-west.

Capital and labor have invested and shared equally in the development of our economy, because from this country's very inception, it has been the policy both of the States and of the United States to encourage such joint ventures in business, industry and commerce between and among the States. As labor is dependent upon capital, and capital equally so dependent upon labor, each must be permitted to move freely, unharassed and with the maximum amount of facility. One cannot be encouraged and the other discouraged. We cannot say to capital: "You may go and move as freely as you wish, whenever you wish." And, to labor: "You must remain wherever you are, and remain for all time frozen in such place."

Freedom to move is perhaps the most basic of human liberties. Migration of persons and peoples has served as the background for some of the greatest historical episodes of mankind. "The wanderings of our biblical fathers, the voyages of Columbus, the exploits of our pioneers, the hazards faced by our colonial ancestors, and the movement of

covered wagons across trackless prairies, all attest to the fundamental nature of human migration." [31]

The available labor market cannot be frozen within the boundaries and limits of the forty-eight States while, at the same time, we permit capital to roam freely, unabated and unharassed without seriously affecting the social, economic and political fabric of our system.[32] To do so would result in the "Balkanization" of the United States and the disintegration of these united States into forty-eight separate and hostile social, economic and political entities, each jealously and avariciously conniving to take for itself the benefits and advantages that may periodically and accidentally come to the other. A nation so divided could not long survive, and it was precisely for the purpose of eradicating the evils then existing, and by the way still existing on the continent of Europe, that this country was created "in order to form a more perfect union".

Thus, in order to create and perpetuate this more perfect union, the framers of the Constitution with calm and deliberation wrote into it: "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States." Any other interpretation of this provision

[31] Testimony of Neil H. Jacoby, Chmn. Ill. Emergency Relief Commission, before House Committee to Investigate the Interstate Migration of Destitute Citizens, Chicago Hearings, Part 3, p. 821.

[32] It is interesting to note that while the State Legislature of California has reenacted the statute to prevent migration, it failed to repeal two statutes, still in effect, for the promotion and encouragement of migration into the State. One of the statutes provides for the creation of a fund not to exceed in the amount of ten thousand dollars in any one year, in any one county for the purpose of encouraging *immigration* and increasing trade in the products of the State of California [Cal. Gen. L. (Deering, 1937), act 8461, sec. 1]; the other authorizes the board of supervisors in each county to levy a special tax to be used for "advertising, exploiting and making known the resources of the county for the purpose of inducing *immigration* to, and increasing the trade and commerce of, said county, or for exhibiting or advertising *for said purposes*, the agricultural, horticultural, viticultural, mineral, industrial, commercial, climatic, educational, recreational, artistic, musical, cultural and other resources or advantages of the county." [Cal. Pol. Code (Deering, 1937), art. IV, sec. 4041.5]

than that it insures beyond all doubt to each of the citizens of the several States the most fundamental right and privilege to move about freely and easily from State to State and through each of the other States in search of opportunity would be calamitous and catastrophic. That this was countenanced by the framers of the Constitution is evidenced by Article IV of the Articles of Confederation. It reads: "The free inhabitants of each of these States, paupers, vagabonds and fugitives from justice excepted, shall be entitled to all the privileges and immunities of free citizens in the several States; and *the people of each State shall have free ingress and egress to and from any other State.*"

This clause is unquestionably the model for Article IV, Section 2, clause 1 of the Constitution as adopted. The clause as adopted, to be sure, is not as specific in its inclusion of the fundamental right of free ingress and egress to and from any of the other States of the Union, but that such was the intent of the framers of the Constitution has never been successfully or even seriously challenged. On the other hand strong dicta expressed in numerous decisions rendered by this and other Courts confirm this conclusion.

> "There can be but little question that the purpose of both these provisions [Art. IV of Articles of Confederation and Art. IV, sec. 2 of the Constitution] is the same, and that the privileges and immunities intended are the same in each. In the article of the Confederation, we have some of these specifically mentioned, and enough perhaps to give some general idea of the class of civil rights meant by this phrase."[33]

In discussing the right of unrestricted ingress and egress in the several States, Justice Washington in *Corfield* v. *Coryell*, 6 Fed. Cases 546, 551 (1823), said: "The next ques-

[33] *Slaughter-House Cases*, 16 Wall. 36, 75 (1872).

tion is, whether this act infringes that section of the constitution which declares that 'the citizens of each state shall be entitled to all the privileges and immunities of citizens in the several states?' The inquiry is, what are the privileges and immunities of citizens in the several states? We feel no hesitation in confining these expressions to those privileges and immunities which are, in their nature, fundamental; which belong, of right, to the citizens of all free governments; and which have, at all times, been enjoyed by the citizens of the several states which compose this Union, from the time of their becoming free, independent, and sovereign. What these fundamental principles are, it would perhaps be more tedious than difficult to enumerate. They may, however, be all comprehended under the following general heads: Protection by the government; the enjoyment of life and liberty, with the right to acquire and possess property of every kind, and to pursue and obtain happiness and safety; subject nevertheless to such restraints as the government may justly prescribe for the general good of the whole. *The right of a citizen of one state to pass through, or to reside in any other state, for purposes of trade, agriculture, professional pursuits or otherwise;* to claim the benefit of the writ of habeas corpus; to institute and maintain actions of any kind in the courts of the state; to take, hold and dispose of property, either real or personal; and an exemption from higher taxes or impositions than are paid by the other citizens of the state; may be mentioned as some of the particular privileges and immunities of citizens which are clearly embraced by the general description of privileges deemed to be fundamental * * *."

Although dissenting from the majority opinion rendered in the *Passenger Cases*,[34] Chief Justice Taney states: "Living as we do under a common government, charged with the

[34] 7 How. 283, 492 (1849).

great concerns of the whole Union, every citizen of the United States, from the most remote States or Territories, is entitled to free access, not only to the principal departments established at Washington, but also to its judicial tribunals and public offices in every State and Territory of the Union. And the various provisions in the Constitution of the United States—such, for example, as the right to sue in a federal court sitting in another State, the right to pursue and reclaim one who has escaped from service, the equal privileges and immunities secured to citizens of other States, and the provision that vessels bound to or from one State to another shall not be obliged to enter and clear or pay duties—all prove that it intended to secure the freest intercourse between the citizens of the different States. For all the great purposes for which the federal government was formed, we are one people, with one common country. We are all citizens of the United States; and, as members of the same community, must have the right to pass and repass through every part of it without interruption, as freely as in our own States. And a tax imposed by a State for entering its territories or harbours is inconsistent with the rights which belong to the citizens of other States as members of the Union, and with the objectives which that Union was intended to attain. Such a power in the States could produce nothing but discord and mutual irritation, and they very clearly do not possess it."

And in commenting upon this opinion, Justice Miller in delivering the opinion for the Court in *Crandall* v. *State of Nevada*[35] says: "Although these remarks are found in a dissenting opinion, they do not relate to the matter on which the dissent was founded. They accord with the inferences which we have already drawn from the Constitution itself, and from the decisions of this Court in exposition of that instrument."

[35] 6 Wall. 35, 49 (1867).

In *Paul* v. *Virginia*,[36] the Court in considering the operation and effect of Article IV, sec. 2 of the Constitution said:

> "It was undoubtedly the object of the clause in question to place the citizens of each State upon the same footing with citizens of other States, so far as the advantages resulting from citizenship in those States are concerned. It relieves them from the disabilities of alienage in other States; it inhibits discriminating legislation against them by other States; it gives them the right of free ingress into other States, and egress from them; it insures to them in other States the same freedom possessed by the citizens of those States in the acquisition and enjoyment of property and in the pursuit of happiness; and it secures to them in other States the equal protection of their laws. It has been justly said that no provision in the Constitution has tended so strongly to constitute the citizens of the United States one people as this.
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> "Indeed, without some provision of the kind removing from the citizens of each State the disabilities of alienage in the other States, and giving them equality of privileges with citizens of those States, the Republic would have constituted little more than a league of States; it would not have constituted the Union which now exists."

Again, in *Ward* v. *Maryland*,[37] the Court, upon the same subject, declared:

> "Attempt will not be made to define the words 'privileges and immunities', or to specify the rights which they are intended to secure and protect, beyond what may be necessary to the decision of the case before the court. Beyond doubt those words are words of very comprehensive meaning, but it will be sufficient to say that the clause plainly and unmistakably secures and protects the right of a citizen of one State to pass into any other State of the Union for the purpose of engag-

[36] 8 Wall. 168, 180 (1868).

[37] 12 Wall. 418, 430 (1870).

ing in lawful commerce, trade, or business without molestation * * *"

In the *Slaughter-House Cases*,[38] Justice Miller, after reciting both the provisions of art. IV of the Articles of Confederation and art. IV, sec. 2 of the Constitution, and after discussing Mr. Justice Washington's opinion in *Corfield* v. *Coryell*, *supra*, said:

> "This definition of the privileges and immunities of citizens of the States is adopted in the main by this court in the recent case of *Ward* v. *The State of Maryland*, *supra*, while it declines to undertake an authoritative definition beyond what was necessary to that decision. The description when taken to include others not named, but which are of the same general character, embraces nearly every civil right for the establishment and protection of which organized government is instituted. They are, in the language of Judge Washington, those rights which are fundamental. Throughout his opinion, they are spoken of as rights belonging to the individual as a citizen of a State. They are so spoken of in the constitutional provision which he was construing. And they have always been held to be the class of rights which the State governments were created to establish and secure."

And, in commenting on the several decisions, Chief Justice White, in *United States* v. *Wheeler*,[39] said:

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[38] 16 Wall. 36, 76 (1873).

[39] 254 U. S. 281, 297 (1920). See also *Truax* v. *Raich*, 239 U. S. 33 (1915), where the court contended that the right of ingress and egress was guaranteed not only to citizens but alien residents as well. In *State* v. *Moody*, 26 Indiana, 299, 301 (1866), the court in declaring an Indiana statute, which made it unlawful for any Negro or Mulatto to come into, settle in or become an inhabitant of the State, invalid on the basis of *Corfield* v. *Coryell*, cited from Story on the Constitution, sec. 1806:

"'It (the privileges and immunities clause of the Constitution) is plain and simple in its language; and its object is not easily to be mistaken. Connected with the exclusive power of naturalization in the national government, it puts at rest many of the difficulties which affected the construction of the article of the confederation. It is obvious, that if the citizens

> "The controlling influence of the opinion in the *Slaughter-House Cases*, as well as that of Mr. Justice Washington in *Corfield* v. *Coryell*, *supra*, stands out in bolder relief when it is observed that in the latter case, following the statement of the general principles contained in the passage quoted in the *Slaughter-House Cases*, there is found, by way of illustration an enumeration of particular rights declared to be clearly embraced by the general principles, one of which is described as, 'The right of a citizen of one state to pass through or reside in any other state, for purposes of trade, agriculture, professional pursuits or otherwise'."

To be sure, none of the decisions discussed can be squarely cited as authority for the proposition that a person, such as the one in question, brought into the State of California by appellant, cannot be precluded from coming into the State. Nevertheless, as there are no cases or even language to the effect that a person without funds or resources in search for employment in another State can be precluded from coming into that State, and since this is the first case where the issues are so clearly drawn, we feel that there is sufficient authority in the very strong language quoted from the decisions interpreting the meaning and intent of the "privileges and immunities" clauses to warrant a decision that the State of California cannot deny migration into the State the classes of persons which Mr. Duncan represents. To hold otherwise, would be a violation of the fundamental right to pass freely and "to reside and work within the bounds of the United States wherever

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of each state were to be deemed aliens from each other, they could not take or hold real estate, or other privileges, except as other aliens. The intention of this clause was to confer on them, if one may so say, a general citizenship; and to communicate all the privileges and immunities which the citizens of the same state would be entitled to under like circumstances.' One of the privileges and immunities arising from this general citizenship is the right to become a citizen of any one of the several states, by becoming a resident thereof."

he may choose * * *",[40] a privilege and attribute of State and Federal citizenship definitely guaranteed by the Constitution of the United States.

Counsel for appellee on page two of his brief contends: It certainly must be admitted that if a State cannot constitutionally exclude paupers from its boundaries it cannot constitutionally prohibit persons from bringing paupers into the State. In *De Jonge* v. *Oregon*, 299 U. S. 353 (1937), this Court points out that it is beyond the power of a State to make a crime of assisting another in the exercise of his constitutional rights. Thus, since the State of California is unable under the privileges and immunities provisions of the Constitution to prevent Mr. Duncan, a resident of Texas and a citizen of the United States, from coming within its borders in search of employment, it is definitely beyond the power of the State of California to hold Mr. Edwards, the appellant, in violation of the statute in question.

Interstate Commerce Clause.

Second. The next question which we submit for determination by this Court is whether or not a State under the guise of its police power may enact such legislation as will seriously burden, hinder and impede the commerce and trade among and between the several States.

The statute in question reads: "Every person, firm or corporation * * * that brings or assists in bringing into the State any *indigent* person * * * knowing him to be an *indigent* person is guilty of a misdemeanor."

The statute imposes a duty on every carrier engaged in interstate commerce, in order to escape criminal liability under it, to determine for itself whether it has aboard the carrier persons, travelling to the State of California, who might be deemed *indigent*. This, the carrier must do even

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[40] From Argument by the Hon. Charles Evans Hughes, then attorney for defendants in error, *United States* v. *Wheeler*, 254 U. S. 281, 290 (1920).

though the statute fails to define the types and classes of persons who might answer to that description.

It is well established that every criminal statute creating a new offense must be so explicit in its terms as to inform those who are subject to penalties under it, what conduct on their part will render them liable. A statute so vague in its terms that men of ordinary intelligence must guess at its meaning and differ as to its application violates every essential element of justice and fair play. A statute that cannot be given an intelligible meaning, because of the uncertainty, indefiniteness and vagueness of its terms will be void and wholly inoperative.[41]

Nevertheless, without specific and definite standards to guide it, the carrier is obliged to proceed with an independent investigation of its own to determine who is indigent, or otherwise be guilty of a somewhat mysterious crime. "Under these statutes it is not a defense that the person acted honestly and in good faith, under a mistake of fact. He is bound to know the fact as well as the law, and he acts at his peril. These statutes do not make a guilty knowledge one of the ingredients of the offense. *Commonwealth* v. *Wentworth*, 118 Mass. 441; *Commonwealth* v. *Boynton*, 2 Allen 160; *Commonwealth* v. *Emmons*, 98 Mass. 6; *Commonwealth* v. *Raymond*, 97 Mass. 567, 568; May, Crim. Law, 3; *Commonwealth* v. *Mash*, 7 Metc. (Mass.) 472; *Commonwealth* v. *Farren*, 9 Allen 489; *Commonwealth* v. *Nichols*, 10 Allen 199; *Commonwealth* v. *Waite*, 11 Allen 264; *Commonwealth* v. *Elwell*, 2 Metc. (Mass.) 190; *Commonwealth* v. *Thompson*, 11 Allen 23; *Hourigan* v. *Nowell*, 110 Mass. 470; *Barronet's Case*, 1 El. and Bl. 1; *Reg.* v.

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[41] *Ex parte* Leach, 215 Cal. 536, 12 Pac. (2d) 3 (1932); *Hewit* v. *State Board of Medical Examiners*, 148 Cal. 500, 84 Pac. 39 (1906); *State* v. *Partlow*, 91 N. C. 550 (1884). See also: Freund, *Use of Indefinite Terms in a Statute* (1924) 24 Col. L. Rev. 193; Aigler, *Legislation in Vague and General Terms* (1923) 21 Mich. L. Rev. 831; Note (1931) 44 Harv. L. Rev. 1139; and Crawford, *Statutory Construction* (1940) p. 340.

Prince, L. R., 2 Cr. Cases 154; 21 Amer. Rep. 268, Note; *Barnes* v. *State*, 19 Conn. 397; *State* v. *Goodenow*, 65 Me. 30; *State* v. *White*, 64 N. H. 48, 5 Atl. Rep. 828." [42]

In order to make such determination, since the burden by statute and law is on the carrier, each of the interstate carriers will be obliged to hire a large staff of investigators and subject every person desiring to go to California to a detailed and rigorous inspection about his or her health, morals, personal and financial position, as well as to all other matters which the investigator may deem essential in making his recommendation to the carrier.

In addition to this investigation on its part, the carrier on arriving at the border will be subject to an equally rigorous inspection on the part of the "border patrol" or some other officials (the statute, of course, makes no provision for its administration). The carrier with its "selectees" aboard, if a steamer, will be required to stop at some "quarantine" station along the coast; if a train, bus or touring car, at some appropriate "port of entry" into the State; and, if an airplane, will be required to land somewhere in the fields, immediately on reaching the State line. To complete this inspection, there will be additional delay, cost and expense, all of which will have to be paid by the passengers or be absorbed in the tariff by the interstate carriers. In any way that we look at it, this double investigation will involve a terrific expenditure of money on the part of the carriers, and in addition will prevent thousands of Americans whom the carrier may deem a "poor risk" from interstate passage on a public conveyance. That this is a burden on interstate commerce, no one can deny.

While this is a definite obligation, both the State inspectors and the carrier's investigators will be faced with the same indefinite burden of determining and construing—who is an *indigent*. And, without any clear or definite

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[42] *State* v. *Cornish*, 66 N. H. 329, 330, 21 Atl. 180, 181 (1890).

standards to guide them, what elements are they to look for and consider in making their investigation, and how under such circumstances can there be uniform enforcement? Neither the carrier nor the State officer is fully learned in the law. Neither has had experience in dealing with the niceties and distinctions that can be drawn from the various and conflicting shades of meaning which may be attributed to such vague and general terms. Yet, the carriers and passengers are left by this statute to the mercy of a particular officer who might be assigned to patrol duty that day.

Thousands of passengers are brought to the State of California daily. Disposition will have to be made of each case. Each of the passengers will have to appear before the officers, and as they come before the boards, the carriers will have to submit all supporting documents and records that the persons carried by them are not *indigent*. Each board, then, according to its own standards, will have to rule, finally, whether each passenger carried is or is not *indigent*. The officials will be faced with all sorts of complex problems. Some of the passengers, the officials will determine, are clearly *non-indigent;* others are clearly *indigent;* but their rulings in a great mass of border-line cases will of necessity be a "hit or miss" proposition. What the basis for such ruling might be, they do not or will not know, but rule they must.[43]

An individual, let us say, such as Mr. Duncan in this case, comes before an inspector. This Mr. "X" appears to be

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[43] For a more complete discussion of administration through border patrols, see section dealing with this subject in the *Supplement* to this brief. In this connection it is also to be pointed out that under California law a defendant is liable to punishment in the State of California when a public offense commenced without the State is consummated within its boundaries, even though the defendant was out of the State at the time of the commission of the offense charged. Cal. Pen. Code (Deering, 1937) sec. 778. See also, Miller, Justin, *Uniform Criminal Law Administration* (Spring, 1941), Montana Law Review 5, 6.

"clean-cut", "able", "competent" and a typical American in every respect. There is no question but that he should be admitted, except that he is without funds, and is coming into the State in search for employment. The officer questioning Mr. "X" is also a typical American. He is kind, charitable and particularly sympathetic. He feels certain that the individual before him cannot be the type of person whom the statute intends to keep out. However, before granting him permission to enter, the officer recalls reading in the papers that morning about a meeting held the night before by a large group of idle, unemployed "radicals" for the purpose of exacting higher wages and better working conditions—a riot ensued. The border official reflects for some moments. These are exactly the people, Mr. "X's" type, who are causing all the unrest in the State. These must be the classes of persons countenanced by the statute. They are dangerous and should not be granted permission to enter. Mr. "X" on reconsideration, is, of course, denied permission to migrate into the State.

The statute makes no provision for hearing or appeal, and the tremendous obligation of the carrier as to whether it has or has not complied with the provisions of the statute may be left solely to the whim, caprice and discretion of a single individual. Whether the officer's interpretation of the term *indigent* will coincide with the carrier's concept of the term is problematical; if it does, is the carrier assured that at another time another officer or even the same officer will rule similarly? In most cases, we believe that he will not, for we know that the term "indigent" falls within the same category of broad terms such as "fair", "reasonable", "adequate", "appropriate", "competent", "expedient", "public good", "public welfare", etc.—all subject to varying interpretations, and open to abuse in the exercise of administrative discretion. The problems involved in ascertaining the meaning of such provisions can be determined only in

terms of the effect and extent of legislative control, which in turn must revolve around one's basic philosophy as to the underlying objectives of regulation. What belongs within the province of proper legislative regulation under such terms may mean one thing to one group of men and quite another thing to another. How far a statute such as the one in question may go in prohibiting various persons from coming within its limits will, in large part, depend upon what type of persons the officers, charged with the responsibilities of their inclusion or exclusion, desire to keep from coming into the State at any one given time.

In a case involving administrative discretion of an immigration official, who denied admission to a group of persons on the ground that they were "likely to become public charges for the following, among other reasons: that they arrived here with very little money [$40 and $25, respectively], and are bound for Portland, Oregon, where the reports of industrial conditions show that it would be impossible for these aliens to obtain employment; that they have no one legally obligated here to assist them * * *," Mr. Justice Holmes in *Gegiow* v. *Uhl*, 239 U. S. 3, 9, 10 (1915), said:

> "The single question on this record is whether an alien can be declared likely to become a public charge on the ground that the labor market in the city of his immediate destination is over-stocked. In the act [before the Court] determining who would be excluded, 'Persons likely to become a public charge' are mentioned between paupers and professional beggars, and along with idiots, persons dangerously diseased, persons certified by the examining surgeon to have a mental or physical defect of a nature to affect their ability to earn a living, convicted felons, prostitutes and so forth. The persons enumerated in short are to be excluded on the ground of permanent personal objections accompanying them irrespective of local conditions unless the one phrase before us is directed to different considera-

tions than any other of those with which it is associated. Presumably it is to be read as generically similar to the others mentioned before and after.

"The statute deals with admission to the United States * * *. *It would be an amazing claim of power if commissioners decided not to admit aliens because the labor market of the United States was over-stocked* * * *."

"We cannot suppose that so much greater a power was entrusted by implication in the same act to every commissioner of immigration, even though subject to appeal, or that the result was intended to be effected in the guise of a decision that the aliens were likely to become a public charge."

And, in the instant case, it would likewise be "an amazing claim of power" if, under the statute in question, the State of California and its officials could subject not aliens, but citizens and interstate carriers to obligations of even more tremendous and indefinite scope. The obligation which this statute imposes is not only a definite and arbitrary interference with interstate commerce, the exclusive jurisdiction over which was left to Congress by the Constitution, but is a practice which in operation and effect will serve as barriers more vicious and more retaliatory than the "custom-barrier-controls" on the Continent. If California is permitted to subject passengers and carriers coming from Arizona and New York to such rigid regulation, there is no question but that Arizona and New York will do likewise in retaliation. What the results of such practices may be is not difficult to foresee—certainly, a sad commentary on—"We, the people of the United States, in order to form a more perfect union * * *."

Sufficient data can be cited to the effect that states "may legislate to prevent the spread of crime, and may exclude from their limits *paupers*, convicts, *persons likely to become a public charge*, and persons afflicted with contagious

or infectious diseases."[44] This language, however, does not appear in cases dealing with migrants, *paupers*, or *indigents*, but in cases involving the constitutionality of statutes providing for quarantine against diseased cattle and for the exclusion of decayed or noxious food unfit for human consumption.[45] With these cases we do not take issue, nor do we take issue with the proposition that a State may establish and maintain adequate quarantines against persons having contagious diseases.[46]

Thus, any language about excluding persons "likely to become a public charge" expressed in cases dealing with quarantines of persons and products, which at most is but a temporary exclusion, is but of little support, if any, on the question whether a healthy, able, competent and employable person is or is not a proper subject of commerce. This is especially so when in most States today, even a poor, aged or infirm person cannot by statute[47] become a public charge.

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[44] *Plumly* v. *Massachusetts*, 155 U. S. 461, 478 (1894); *Missouri K. & T. Ry. Co.* v. *Haber*, 169 U. S. 613, 629 (1898).

[45] See Dunlap, *Power of States to Prevent Entry of Paupers From Other States* (1938) 26 Cal. L. Rev. 608; *Baldwin* v. *Seelig*, 294 U. S. 511, 525 (1934).

[46] *Morgan's Steamship Co.* v. *Louisiana Board of Health*, 118 U. S. 455 (1886).

[47] Under these laws enacted by some forty states, a person in order to obtain public relief or aid from a state must be a resident of that state for a period of time ranging from six months to five years with the intention of becoming a resident of that state. For a typical Settlement Law, see, *infra*., p. 66. These laws are based on the Old English Poor Laws enacted in the reign of Elizabeth. These were "the culmination of successive efforts made over a period of several centuries to deal with the dependency attendant upon the break-up of the feudal system and the consequent growth of towns and cities. People who for centuries had been bound to the land in serfdom were gradually released in increasing numbers. In their search for employment as wage earners many became wanderers unwelcome by any community. As early as 1351 the Statute of Labourers attempted to curtail their movement by requiring them to work at whatever was offered, on penalty of imprisonment. In the sixteenth century, during the reign of Henry VIII, the parishes were charged with responsibility for providing needed assistance to locally-born persons and

The carriage of persons from one State to another is interstate commerce, whether it is done free or for hire.[48] It has even been said that the mere passage of persons on foot across a State line is likewise interstate commerce.[49]

In the *City of Bangor* v. *Smith*,[50] a Maine statute required a common carrier who brought into the State any person, who did not have a settlement therein, to remove him from the State if he fell into distress within a year, and in default thereof to be liable for his support. The case arose out of

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those who had resided in the parish for three years. This and other related provisions were incorporated in the famous Elizabethan code of the early seventeenth century.

"As a result of this fixing of local responsibility, cruel measures were adopted in an attempt to force people to 'stay put' or to move on once they had left the parish to which they 'belonged'. Scores of thousands of poor folk were taken into custody annually and transported from one part of the kingdom to another unless they could put up sufficient security to insure their not becoming public charges. The custom of 'passing on', or of removing persons without authorization from one parish to another was commonly practiced, the sick, insane and penniless often being dropped in the next town in the middle of the night. Even workers who had secured employment were not immune from forced removal to the place of their settlement; and very often when their settlement was a matter of dispute whole families were removed back and forth several times between parishes. There were thousands of law-suits between the parishes and million of pounds were spent for litigation and removals.'" Hirsch, Harry M., *Our Settlement Laws*, p. 6. *Cf. Adams County* v. *Burleigh County*, 69 N. D. 780, 291 N. W. 281 (1940).

[48] *Gibbons* v. *Ogden*, 9 Wheat. 1 (1824); *Caminetti* v. *United States*, 242 U. S. 470 (1917); *United States* v. *Burch*, 226 Fed. 974 (1915); see also *Gooch* v. *United States*, 297 U. S. 124 (1936); *Bailey* v. *United States*, 74 Fed. (2d) 451 (1934). See hearings before the Select Committee Investigating National Defense Migration, House of Representatives, 77th Cong., 1st Sess., Part II, p. 4811 et seq. Arising out of such investigation, note newspaper item in *Washington Times-Herald*, dated Tuesday, Sept. 16, 1941: "Toledo, Ohio, Sept. 16. (C. T. P. S.)—Federal Judge Frank L. Kloeb today fined the Great Lakes Sugar Growers Employment Committee $2,000 and costs after it entered a plea of nolo contendere on the charge of transporting laborers from Mexico in May, 1939 and October, 1940 to Toledo in interstate commerce without proper permits. The laborers were brought to the Toledo sugar beet fields. Julio de la Pena, Toledo, driver of the bus used to transport the laborers, was fined $1,000 and costs."

[49] *Covington Bridge Company* v. *Kentucky*, 154 U. S. 204, 218 (1894).

[50] 83 Me. 422, 424, 22 Atl. 379 (1891).

the bringing of 56 Italians from New York City to Bangor, Maine, who afterwards fell into distress and received poor relief. In holding the statute invalid as an unconstitutional interference with interstate commerce by the State, the Court said:

> "That the carrying of persons from a foreign country into the United States, or from state to state is commerce within the meaning of this clause of the constitution is too well settled to justify the citation of authorities. The bringing of persons by common carriers, then, from another state into this state is commerce between the states. Is the state statute which we have quoted [the statute involved in that case] a regulation of commerce? We think it is. In *Railroad Co.* v. *Husen*, 95 U. S. 465, the court says: 'Transportation is essential to commerce, or rather it is commerce itself and every obstacle to it or burden laid upon it by legislative authority is a regulation.' It is imposing an additional duty upon the carrier. It makes the commerce more burdensome to the carrier; for after a person is landed in the state, it imposes upon the carrier the responsibility for his pecuniary condition for a year * * *"
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> "* * * it is unnecessary to discuss the effect of this statute further. Its provisions are too broad and sweeping to be considered within the power of the state. It is the exercise of a power granted solely to the United States, which the state cannot exercise * * *."[51]
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> "It is said by counsel that it is aimed against pauperism and may be sustained as valid as to persons who are paupers when brought into the state. Its terms are general. It cannot be divided and held to be valid as to one class of persons and invalid as to the others."[52]

In declaring invalid a California statute providing for the giving of bond and paying of fees by the owners of

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[51] *Ibid.* p. 426.

[52] *Id.*

steamships bringing passengers into the State, Justice Miller said:[53]

> "The passage of laws which concern the admission of citizens and subjects of foreign nations to our shores belongs to Congress, and not to the States. It [the Congress] has the power to regulate commerce with foreign nations: the responsibility for the character of those regulations, and for the manner of their execution, belongs solely to the national government. If it be otherwise, a single State can, at her pleasure, embroil us in disastrous quarrels with other nations."

And, in declaring a somewhat similar New York statute invalid as being inconsistent with the commerce clause of the Constitution, Justice Miller, again delivering the opinion for the Court, said:[54]

> "* * *, the provisions of the Constitution of the United States, on which the principal reliance is placed to make void the statute of New York, is that which gives to Congress the power 'to regulate commerce with foreign nations.' As was said in *United States* v. *Holliday*, 3 Wall. 417, 'commerce with foreign nations means commerce between citizens of the United States and citizens or subjects of foreign governments.' It means trade, and it means intercourse. It means commercial intercourse between nations, and parts of nations, in all its branches. It includes navigation, as the principal means by which foreign intercourse is effected. To regulate this trade and intercourse is to prescribe the rules by which it shall be conducted. 'The mind,' says the great Chief Justice, 'can scarcely conceive a system for regulating commerce between nations which shall exclude all laws concerning navigation, which shall be silent on the admission of the vessels of one nation into the ports of another'; and he might have added, with equal force, which prescribed no terms for the admission of their cargo or their passengers. *Gibbons* v. *Ogden*, 9 Wheat. 190."

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[53] *Chy Lung* v. *Freeman, et al.*, 92 U. S. 275, 280 (1875).

[54] *Henderson et al.* v. *Mayor of New York et al.*, 92 U. S. 259, 270 (1875).

True, both the *Chy Lung* and *Henderson* cases deal with two State statutes which impose definite obligations on persons engaged in *foreign commerce* bringing immigrants to these shores. In both cases, the burdens were held to be *contra* to the powers delegated to Congress to regulate foreign commerce. To Congress, however, has also been delegated the power to regulate the commerce between the States, and therefore cannot the same principles as expressed in the above cases be applied to any burden, however small, which a State may impose on that commerce? If it be otherwise, cannot a single State, at her pleasure, embroil each of the other States of this country in disastrous quarrels with each other in the same manner as the legislation in the *Chy Lung* case, *supra*, was directed at foreign commerce?

Also, if in the case of foreign commerce, Congress is charged with the responsibility for the character of the regulations concerning that commerce, and for the manner of their execution, so must Congress be equally charged with respect to interstate commerce.

The transportation of a passenger from Liverpool to New York is one single voyage. So is the transportation of a passenger, let us say, from New York, Chicago, St. Louis, or Salt Lake City to the State of California. The passage of the passenger in the first instance is not complete until he is landed in New York, and in the second case, not until he is permitted to land at his point of destination in the State of California. Thus, a "law or rule emanating from any lawful authority, which prescribes terms of conditions on which alone the vessel can discharge its passengers, is a regulation of commerce; and, in case of vessels and passengers coming from foreign ports, is a regulation of commerce with foreign nations,"[55] so, in the case of railroads, busses, airplanes, steamers and touring cars coming from

[55] *Ibid.* p. 271.

other States of the Union it is a regulation of commerce, between and among the States.

Whether a law or regulation affects either interstate or foreign commerce is not the controlling factor. The importance of any such regulation lies in the fact that commerce of the type within the exclusive jurisdiction of Congress is being affected. However difficult this may be to determine, "it is clear from the nature of our complex form of government, that, whenever the statute of a State invades the domain of legislation *which belongs exclusively to the Congress of the United States, it is void, no matter under what class of powers it may fall or how closely allied to powers conceded to belong to the States.*" [56]

It might be argued that the burden imposed upon the commerce in the instant case is more speculative and less direct than in the above two cases, and therefore is not such an interference prohibited to the States by the Constitution. While it cannot be denied that a tax of one and one-half dollars for each immigrant landed is definitely a specific and direct obligation, we do contend that in whatever language a statute may be framed, its purpose must be determined by its natural and reasonable effect; and it is apparent that the obligation of the California statute, although indefinite and indirect, is in effect an imposition much more onerous and oppressive. The fact that the carrier is burdened with a costly and laborious dual inspection and investigation and the fact that thousands of Americans will be denied interstate passage on public carriers is in fact a tax not only on every alien and immigrant, but on every citizen of the United States desiring to go by carrier to the State of California.

In addition to this burden and expense, it might also be asked, what will become of the persons brought by the car-

[56] *Ibid.* p. 272.

rier to the State line who are refused admission. Does the State of California or any other State purport to establish a "no-man's land" or a concentration camp within its boundaries for all such undesirables, will the State of California or any other State "dump" these "undesirables" within the boundaries of the bordering sister-states,[57] or will the carrier in order to escape criminal liability be obliged to carry them back to the place of embarkation free of charge? We know of the liability that steamers assume in bringing undesirable persons to our shores. We know of their detention when not being permitted to land, and the obligation upon the steamers to bring such passengers back from whence they came free of charge. Will, under the statute in question, a similar obligation be imposed upon the carrier engaged in interstate commerce?

It might finally be advanced as in the *Henderson* case, *supra*, "that under the decisions of this Court, there is a kind of neutral ground, especially in that covered by the regulation of commerce, which may be occupied by the State, and its legislation be valid so long as it interferes with no act of Congress or treaty of the United States. Such a proposition is supported by the opinions of several of the judges in the *Passenger* Cases; by the decisions of this court in *Cooly* v. *The Board of Wardens*, 12 How. 299; and by the cases of *Crandall* v. *Nevada*, 6 Wall. 35; and *Gilman* v. *Philadelphia*, 3 Wall. 713." But, as to this, Justice Miller says:[58] "this doctrine has always been controverted in this Court and has seldom, if ever, been stated without dissent. These decisions however, all agree, that under the commerce clause of the Constitution, or within its compass, there are powers, which, from their nature, are exclusive in Congress; and in the case of *Cooly* v. *The Board of Wardens*, it was said, that 'Whatever subjects of this power are in their nature na-

[57] See facts in *Adams County* v. *Burleigh County*, 69 N. D. 789, 291 N. W. 281 (1940).

[58] *Henderson et al.* v. *Mayor of N. Y. et al.*, 92 U. S. 259, 272 (1875).

tional, or admit of one uniform system or plan of regulation, may justly be said to be of such a nature as to require exclusive legislation by Congress.' "

A regulation which imposes onerous, perhaps impossible conditions on those engaged in commerce, whether foreign or interstate, must of necessity be national in its character —they should be and ought to be the subject of a uniform system or plan. Should this Court hold that the statute in question is not in violation of the commerce clause, New York, Illinois, Arizona, Nevada and every other State of the Union would be obliged to impose equally rigorous limitations in retaliation. To avoid any such discord and rupture in the relation of the States to each other, it is apparent, therefore, "that, if there be a class of laws which may be valid when passed by the States until the same ground is occupied by a treaty or an act of Congress, this statute is not of that class." [59]

The question of interstate migration is not for each State to regulate individually and without regard to the regulations enacted by the other States. It is not a problem which each State in intercourse with all others can settle for itself without interfering with the power over interstate commerce delegated to the Congress of the United States. And again, in the words of Justice Miller:

"We are of opinion that this whole subject has been confided to Congress by the Constitution; that Congress can more appropriately and with more acceptance exercise it than any other body known to our law, * * *" and that by making provision for such a system of laws in those matters, to apply alike and with equal force to persons desiring to migrate from one State to another or to any part of the Union, where opportunities for employment may be available, "which has long been a problem of con-

[59] *Ibid.*, p. 273.

test and complaint, may be effectually and satisfactorily settled."[60]

Equal Protection of the Laws.

Third: It might be argued by the State of California that it was not the intention of its legislature to burden and interfere with interstate commerce to the extent described. But no matter how little or how great the burden, the intent and purpose of a statute must be determined by its natural and reasonable effect. The statute in no uncertain terms obligates and imposes the duty on every "person, firm or corporation" bringing *indigents* into the State, "knowing them to be *indigents*". There can be no question that the enactment must apply not only to trucks, trailers and automobiles but must apply with equal force to steamers, trains, busses and airplanes.

The State may argue further that a presumption operates in favor of the steamship, rail, bus or airplane companies, but not in favor of persons operating broken-down trucks and automobiles; that persons travelling to California by steamer, rail, bus or air, who can afford to pay for such means of transportation, are not *indigent*; and that persons travelling with others in automobiles and trucks are *indigent*.

For the sake of argument, there might be some basis for this contention and classification, if only the statute contained some standard or guide as to its application. But, under the circumstances, is it the State's contention that the sole consideration for the interpretation of this statute is whether a person is or is not able to pay for his transportation? If so, this statute must fall for want of the equal protection of the laws; for by this standard, a person who is competent, able and willing to work *and who can afford to pay for his transportation on a public carrier,*

[60] *Ibid.* p. 274.

whatever the sum may be, is not an indigent; while, the person who is competent, able and willing to work and *who cannot afford to pay for his transportation is an indigent.* Thus, firms and corporations owning steamship, railroad, airplane, and bus lines would not be held liable under the statute; while car owners bringing either a mother, father, aunt, uncle, cousin or in-laws would be held liable for bringing *indigents* into the State, even though the statute clearly speaks not in terms of a *poor person* bringing *indigents* into the State, but in terms of "*any person, firm or corporation*" bringing *indigents* into the State.

In either case, the statute must fall, since it fails to come within the limitations imposed upon the States by the fourteenth amendment, which "undoubtedly intended not only that there should be no arbitrary deprivation of life or liberty, or arbitrary spoliation of property, but that equal protection and security should be given to all under like circumstances in the enjoyment of their personal and civil rights; that all persons should be equally entitled to pursue their happiness and acquire and enjoy property; that they should have like access to the courts of the country for the protection of their persons and property, the prevention and redress of wrongs, and the enforcement of contracts; that no impediment should be interposed to the pursuits of anyone except as applied to the same pursuits by others under like circumstances; *that no greater burdens should be laid upon one than are laid upon others in the same calling and condition, and that in the administration of criminal justice no different* or higher punishment should be imposed upon one than such as is prescribed to all for like offences." [61]

By such test, it cannot, therefore, be contended that a person carrying a certain class of passengers into the State by touring car *may be criminally liable*, while the firm or

[61] *Barbier* v. *Connolly*, 113 U. S. 27, 31 (1885).

corporation carrying the same class of passengers destined for California *cannot be criminally liable*, especially since the statute imposes an equal obligation on "every person, firm or corporation".

Thus, whatever be the construction placed by the State as to the application of the statute, it fails to meet the equal protection of the laws, if it applies to touring cars and trucks, and not to busses, trains, steamers and airplanes; and, if it is the State's contention that the statute applies equally to all interstate carriers, there is then such a burden on interstate commerce as to be in conflict with the interstate commerce provisions of the Constitution.

It might further be argued that even though there be no discrimination between carriers in violation of the equal protection of the laws, there is such violation, since by the broad and sweeping discretionary powers vested by the statute in question in some official to determine who is or is not indigent, thousands of Americans will be unconstitutionally denied the privilege of looking for employment; and, through no fault of their own, they will be prevented from using for such purpose not only interstate public carriers, but the roads and highways which they as citizens of the United States helped to build and maintain; those with money, of course, being permitted to use the carriers and highways as freely as they may desire.

In this case, as in *Truax* v. *Raich*,[62] the State may seek to justify such exclusion as an exercise of the power of the State to make reasonable classifications to protect the health, safety, morals and welfare of those within its jurisdiction. But as in the *Truax* case, "this admitted authority, with the broad range of legislative discretion that it implies, does not go so far as to make it possible for the State to deny to lawful inhabitants, because of their race or nationality [or lack of funds], the ordinary means of

[62] 239 U. S. 33 (1915).

earning a livelihood. It requires no argument to show that the right to work for a living in the common occupations of the community is of the very essence of the personal freedom and opportunity that it was the purpose of the Amendment to secure. *Butchers' Union* v. *Crescent City Co.*, 111 U. S. 746, 762; *Barbier* v. *Connolly*, 113 U. S. 27, 31; *Yick Wo* v. *Hopkins*, 118 U. S. 356, 369; *Allgeyer* v. *Louisiana*, 165 U. S. 578, 589, 590; *Coppage* v. *Kansas*, 236 U. S. 1, 14. If this could be refused solely upon the ground of race or nationality [or the lack of funds], the prohibition of the denial to any person of the equal protection of the laws would be a barren form of words."

And, in interpreting the provisions of an earlier California statute, dealing with the exclusion of certain foreigners, Mr. Justice Field said: [63]

> "A statute thus sweeping in its terms, confounding by general designation persons widely variant in character, is not entitled to any very high commendation. If it can be sustained as the exercise of the police power of the state as to any persons brought within any of the classes designated, it must be sustained as to all the persons of such class. That is to say, if it can be sustained when applied to the infirm who is poor and dependent, when unaccompanied by his relatives, able and willing to support him, it must be sustained when applied to the infirm who is surrounded by wealth and its attendants, if he is thus unaccompanied. If it can be sustained when applied to a woman whose debauchery consists in the prostitution of her person, it must be sustained when applied to a woman whose debauchery consists in her intemperance in food and drink; and even when applied to the repentant Magdalen who has once yielded to temptation and lost her virtue. The commissioner of immigration is not empowered to make any distinction between persons of the same class; and there is nothing on the face of the act which indicates

[63] *In re Ah Fong*, 1 Fed. Cases, 213, 216 (1874).

that the legislature intended that any distinction should be made."

"* * * The doctrine now asserted by counsel for the commissioner of immigration, if maintained, would certainly be invoked, and at no distant day, when other parties, besides low and despised Chinese women, are the subjects of its application, and would then be seen to be a grievous departure from principle."[64]

And, as to another California enactment, involving not exclusion, but discrimination as to certain classes of persons through the exercise of unlimited discretion in the issuance of permits, Mr. Justice Matthews, in delivering the opinion for the Court, said:[65]

"We are consequently constrained, at the outset, to differ from the Supreme Court of California upon the real meaning of the ordinances in question. * * * They seem intended to confer, and actually do confer not a discretion to be exercised upon a consideration of the circumstances of each case, but a naked and arbitrary power to give or withhold consent, not only as to places but as to persons. So that, if an applicant for such consent, being in every way a competent and qualified person, and having complied with every reasonable condition demanded by any public interest, should, failing to obtain the requisite consent of the supervisors to the prosecution of his business, apply for redress by the judicial process of *mandamus*, to require the supervisors to consider and act upon his case, it would be a sufficient answer for them to say that the law had conferred upon them authority to withhold their assent, without reason and without responsibility. The power given to them is not confided to their discretion in the legal sense of that term, but it is granted to their mere will. It is purely arbitrary and acknowledges neither guidance nor restraint."

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[64] *Ibid.* p. 217

[65] *Yick Wo* v. *Hopkins*, 118 U. S. 356, 366, 367 (1885).

"This conclusion and the reasoning on which it is based, are deductions from the face of the ordinance as to its necessary tendency and ultimate actual operation. In the present cases we are not obliged to reason from the probable to the actual, and pass upon the validity of the ordinances complained of, as tried merely by the opportunities which their terms afford, of unequal and unjust discrimination in their administration. For the cases present the ordinances in actual operation, and the facts shown establish an administration directed so exclusively against a particular class of persons as to warrant and require the conclusion, that, whatever may have been the intent of the ordinances as adopted, they are applied by the public authorities charged with their administration, and thus representing the State itself, with a mind so unequal and oppressive as to amount to a practical denial by the State of that equal protection of the laws which is secured to the petitioners, as to all other persons by the broad and benign provisions of the fourteenth amendment to the Constitution of the United States." [66]

Though the statute in the instant case be fair on its face and impartial in appearance, because it applies to "every person, firm and corporation", and applies alike to every person desiring to settle in the State of California, it must be held to be invalid within the meaning of the fourteenth amendment to the Constitution, if it is to be applied and administered "by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances. • • • This principle of interpretation has been sustained by this Court in Henderson *v.* Mayor of New York, 92 U. S. 259; Chy Lung *v.* Freeman, 92 U. S. 275; Ex-parte, Virginia, 100 U. S. 339; Neal *v.* Delaware, 103 U. S. 370; and Soon Hing *v.* Crowley, 133 U. S. 703." [67]

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[66] *Ibid.* p. 373.

[67] *Ibid.* pp. 373, 374.

That the person coming by automobile to the State of California to look for employment is similarly situated to the person coming by train or airplane, cannot be denied. That in one case, one may have a five dollar bill in his possession, and in the other case a one hundred dollar bill, is not sufficient justification to rule that the fourteenth amendment was intended as protection only to those with the one hundred dollar bills or to those owning railroads, aeroplanes, or busses and not to those who own trucks, cars or horses. The liberties, rights and privileges guaranteed by the "equal protection of the laws" cannot be construed to depend for its interpretation on poverty or wealth, as the case may be. A statute to meet the requirements of the constitutional provision must operate alike upon all persons and upon all property under the same circumstances and conditions.

Conclusion.

To conclude, let us first make clear that we have no more objection to the California Statute in the instant case than with the similar statutes in the twenty-seven other States, for if the California statute is held unconstitutional, the other statutes must likewise fall. And they must fall for this case is concerned with millions of persons, who through no fault of their own, are in search of employment and new opportunities—the opportunity of being able once again to provide for themselves and their families. These people in the instant case are not vagrants, "bums" or tramps unwilling to toil and sweat with their brain and brawn. In such chaotic and critical days as these, they are asking for little enough in this land of plenty. Have they not been sufficiently plagued? Are they as citizens of the United States, who would if need be give their very lives for the protection and safety of these shores, to be further disgraced, harassed and humiliated because they are seek-

ing employment, and want the right to some economic freedom? Or, as it is intended by such laws, are they to be doomed to a life of slavery and misery?

We know of the difficulties involved in earning a livelihood under normal conditions. It is difficult enough, and what with the limitations imposed by the States on the right of an individual to engage in an occupation of its own choosing.[68] Can the States now prevent individuals, altogether, from coming into the State to earn a livelihood? The question is far too serious. The problem is not for California, Colorado, Florida, or any other State, alone, to decide. We, as citizens of the United States all have a stake in what the various States of the Union purport to do. These States cannot be permitted to say that one from New York, Illinois, or Missouri cannot come within their limits to look for employment. Should this statute be upheld the twenty States in addition to the twenty-eight already having such legislation would each be permitted to set up all sorts of barriers against the residents of the others.

Is this country to grow and develop as a single and united nation, or are each of us to be confined within the limits of forty-eight separate entities? The results arising through the suspicions, jealousies, the scheming and conniving of one country against the other on the continent of Europe needs no emphasis. Are we in this country also going to impose limitations equally as rigorous on progress, expansion and development? Our economy is a na-

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[68] Such as the New York law requiring applicants for licenses as master plumbers to have at least three years of experience in the plumbing industry together with a technical degree in engineering from a college or university approved by the Regents of the University of the State of New York. N. Y. Laws (1936), c. 610. See *Benedetto v. Kern*, 167 Misc. 831, 837, 4 N. Y. S. (2d) 844, 850 (1938), aff'd by Mem. Dec. 255, App. Div. 753, 7 N. Y. S. (2d) 227 (1938). See also Silverman, Bennett, Lechliter, *Control by Licensing Over Entry into the Market*, (Spring, 1940), 8 Law and Contemporary Problems 239.

tional one. It cannot be permitted to disintegrate into an economy of forty-eight small separate units each warring upon and retaliating against the other.

Much has been written about the question of human migration in terms of a post-depression and pre-defense problem. Human migration is now seriously affecting our national defense program, and during the post-war period of readjustment, the problem of interstate migration will be of even greater magnitude.

According to expert testimony presented before the House Committee Investigating National Defense Migration, it was estimated that some two million persons have left their home States for defense centers. Many millions more will be required to do likewise before the national emergency terminates. Can anyone visualize the implications arising out of the situation when during the period of reconstruction this country gears itself from a war to a peace economy? The millions employed in defense will take to the roads. These people, as capital itself, will be in search of new industries and new opportunities. Its impact on our economy will be as dangerous a situation as any anticipated attack by foreign powers. With settlements gained and lost,[69] will each State, individually, during such a period, be permitted to regulate this flow of *human cargo* across State lines?

There is no question but that this nation, without regard to State lines, must now prepare for national defense. Attack from abroad is, surely not a problem for a single State to cope with but is a problem for the whole of the United States. We, all of us together, must do everything within our power to make these, our shores, impregnable against attack. And, it is equally imperative that this

[69] For an analysis of the State statutes providing for the loss of settlement, see Chart II, *infra*, pp. 58-63. For text of Statutes pertaining to the loss of settlement, see *Supplement* to this brief.

nation, as a whole, without regard to State lines, must deal similarly with the problem of human migration. No single State or group of States, collectively or singly, can prevent four million persons, all good American citizens, from becoming Stateless, homeless and "without a country," or resting-place while moving from State to State as a result of circumstances over which they have no control.

The repercussions of such a situation are so closely connected with our national unity, safety, welfare and security that it cannot of necessity be a State question, alone. It is one for the nation as a whole to determine.

It may be argued, since this question is one of such imminent national importance that it is a legislative and not a judicial question; that it is the court's function only to interpret the laws and not pass upon the wisdom of policy fundamental in the law; and, therefore, that if the emergency is of such proportions, it is for the Congress and not the Supreme Court of the United States to act. To this, we can only say that millions of words have been written about the separation of powers, and we are no nearer its solution. To argue for one point of view rather than the other, in light of all the decisions, is nothing but an expression of one's likes or dislikes. And, this is no time to indulge in such rhetoric or semantics—the lives of millions are at stake.

The constitutionality of the statute in question is before the court. In effect, if upheld, it will deny to the people of the United States the most fundamental right of free "ingress and egress" in search for opportunity. The government is only as strong as its weakest link, and if we have not as yet learned, we should learn now that these sacred rights cannot be toyed with. The people involved are real. They are not pawns in the hands of State governments; they do not want to be involved in a system of being required to carry passports and badges, or to obtain visas and await quotas in migrating from State to State. They are

earnest and determined. They do not want to go back to feudal times—to be "pushed around" from city to city, county to county and State to State. They want to be a part of the whole United States and share both in its opportunities and obligations.

Only one case need be cited of the misery that these laws are causing to untold millions. In the words of one of the State judges:[70]

> "It is difficult for the writer of this opinion to pass calmly and dispassionately upon the facts in this case and the law governing the same. One would fain suppress much of the evidence but necessary facts must be set forth. To the credit of the government of this country and the general attitude of our people toward the poor and unfortunate, it may well be said few records show any such callousness toward human beings as this controversy between South Dakota and North Dakota discloses. The case is an illustration of the extent to which 'man's inhumanity to man' may be carried. Human beings are shifted around like so much cargo. Somewhere and somehow the well springs of humanity and brotherhood appeared to be dried up. Sick and impoverished creatures against whom there is no indication of crime, laziness, or willfulness, have no place to lay their weary heads, except such as the generosity of Adams County gives them as a mere subsistence in a situation not of its own making, and for which it is not responsible. The callous indifference of South Dakota seems scarcely credible in this age."

To allow this condition to exist in the last stronghold of democracy is indeed a sad commentary on our way of life. Migration will not stand still, because laws tell it that it must. Industry, business, employment and opportunity do not want to be frozen. In all the investigations made by the House Committee Investigating National Defense

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[70] *Adams County* v. *Burleigh County*, 69 N. D. 780, 291 N. W. 281, 283 (1940).

Migration, it has not found a single person who would not have remained at home if only there had been some means for even a mere subsistence. Each of them was compelled to leave home out of sheer desperation. And, if not aided by their government, to whom and to what government should they plead for assistance? These are our people. They are like us and are our very own. Losing their farms, their livestock, their machinery and every other means of earning a livelihood, they took to the road as the *Joads* did. Doing so, they did not change morally, physically or spiritually. And, as Americans they have the right to refuse to starve while standing still. They cannot stand still. And, each State of the Union cannot be permitted to impose divers obligations to prevent them from migrating in search of employment. Poverty cannot be declared to be a crime in this country, and we cannot afford to place the "dollar-sign" on each of the borders of the sisterhood of States. We must face the stark reality of the situation. It is an ominous one, but we must act wisely, carefully and cautiously. It is not yet too late. We cannot and must not tolerate such conditions to exist. We must hold sacred the liberties so zealously cherished and guaranteed to all of these people by the Constitution of the United States. This statute must be declared invalid as in violation of the most fundamental liberties guaranteed by that instrument. "This Union cannot permanently endure half slave and half free."

Thus, the judgment appealed from should be reversed and the complaint dismissed.

Respectfully submitted,

JOHN H. TOLAN,
As Amicus Curiae.

IRWIN W. SILVERMAN,
Washington, D. C.,
Of Counsel.

APPENDIX.*

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* Counsel is very much indebted to Mr. Thomas J. Winston, Jr. for his assistance in the compilation and analysis of the state anti-migratory statutes.

Chart No. 1

Comparative Analysis of State Statutes [1]
Prohibiting the Migration of Poor, Aged, Infirm and Indigent Persons
Across
State, County, and Municipal Boundaries

Citation to State Statutes	Limitations as to persons			Geo. Lim.[5]	Sanctions [6]	Deportation and Removal[7]
	Subject to Restrictions [2]	Prohibition Applicable to [3]	Knowledge Intent [4]			
(1)	(2)	(3)	(4)	(5)	(6)	(7)
Alabama						
Code (1940) tit. 44, sec. 19	poor	any person	intent	state	fine, charge	
Ibid., sec. 20	infant, lunatic, maimed, deaf, dumb, aged or infirm	any person commanding vessel		state	charge	
Ibid., sec. 14						adm. action

Footnotes:

[1] For text of statutes, see Supplement to this brief.

[2] Classes of persons prohibited from migrating. With the exception of Iowa no state statute defines the terms used. For the Iowa definition see p. 10.

[3] Classes of persons prohibited from bringing, transporting, carrying or sending from place to place persons designated in column 2.

[4] Knowledge—denotes knowledge that the person migrating is poor, infirm, indigent, etc. Intent—denotes that the person brought the poor person in with the intent of making the state, county or locality chargeable with his support. Where the statute makes no provision with regard to knowledge or intent, the column will be left blank.

[5] The term "state" denotes that the statute prohibits migration into the state; "county" prohibits migration from county to county within the state; "both" applies to both county and state; "locality" applies to towns, villages and other such subdivisions.

[6] Penalties.—The offense is generally a misdemeanor and is punished by fine or imprisonment or both, and in some states the person is also made chargeable for the support of the person brought in. Some statutes levy civil penalties only. These are indicated by the word "forfeit" or "charge" or both.

[7] Deportation is either by court order or administrative action and will be so indicated.

Chart No. 1—Continued

Citation to State Statutes	Limitations as to persons			Geo. Lim. [5]	Sanctions [6]	Deportation and Removal [7]
	Subject to Restrictions [2]	Prohibition Applicable to [3]	Knowledge Intent [4]			
(1)	(2)	(3)	(4)	(5)	(6)	(7)
California						
Welfare & Institutions Code (Deering, 1937) sec. 2615	indigent	every person, firm, or corporation	knowledge	state		
Penal Code (1939) sec. 19					fine, and/or impris.	
Colorado						
Stats. Ann. (1935) c. 124, sec. 10	pauper	any person	knowledge	both	forfeit	*
Ibid., sec. 7						adm. action
Connecticut						
Rev. Stats. (1930) sec. 1692	indigent	any person	intent	both	forfeit, if person becomes charge within one year	
Rev. Stats. (Supp. 1939) sec. 559e						court order
Rev. Stats. (1930) sec. 1691						adm. action
Florida						
Comp. Gen. Laws (1927) sec. 8003	sick or disabled sailor, pauper, vagrant	masters, commanders of ships or vessels		state	fine or impris.	

Chart No. 1—Continued

Citation to State Statutes	Limitations as to persons			Geo. Lim. [6]	Sanctions [6]	Deportation and Removal [7]
	Subject to Restrictions [2]	Prohibition Applicable to [3]	Knowledge Intent [4]			
(1)	(2)	(3)	(4)	(5)	(6)	(7)
Georgia						
Code Ann. (1935) tit. 23, sec. 23-2305	pauper	any person	intent	both	charge	
Ibid, sec. 23-2307	infant, lunatic, maimed, deaf and dumb, blind, aged, or infirm	commander of vessel or mgr., or proprietor of theatrical, circus, or any migratory company or any person passing through the state		state	charge	
Illinois						
Stats. Ann. (Smith-Hurd, 1935) c. 107, sec. 13	pauper	any person	knowledge	both	forfeit	
Stats. Ann. (Smith-Hurd, Supp. 1940) c. 107, sec. 16						adm. action
Indiana						
Stats. Ann. (Burns, 1933) c. 46, sec. 10-4601	pauper	any person	both	state	fine	
Ibid, tit. 52, c. 1, sec. 52-164						court order

Chart No. 1—Continued

Citation to State Statutes	Limitations as to persons			Geo. Lim. [5]	Sanctions [6]	Deportation and Removal [7]
	Subject to Restrictions [2]	Prohibition Applicable to [3]	Knowledge Intent [4]			
(1)	(2)	(3)	(4)	(5)	(6)	(7)
Iowa Code (1939) sec. 3828.091 Ibid, sec. 3828.090	pauper or poor	any person	both	both	fine, charge	 court order
Kansas Stats. Ann. (Corrick, 1935) secs. 39-338, 39-339	pauper, person likely to become charge	any person		county	fine, and/or impris.	
Kentucky Stats. Ann. (Baldwin's, 1936) secs. 3922, 3923	poor	any person		both	charge	
Maine Rev. Stats. (1930) c. 33, sec. 43 Ibid, sec. 36	poor, indigent, insane	any person	both	both	fine, or impris., charge	 court order
Massachusetts Laws. Ann. (1933) c. 117, sec. 28 Ibid., sec. 23, 25	poor and indigent	any person	both	both	forfeit	 adm. action

Chart No. 1—Continued

Citation to State Statutes	Limitations as to persons			Geo. Lim. [5]	Sanctions [6]	Deportation and Removal [7]
	Subject to Restrictions [2]	Prohibition Applicable to [3]	Knowledge Intent [4]			
(1)	(2)	(3)	(4)	(5)	(6)	(7)
Michigan						
Stats. Ann. (1937) sec. 16.154	poor or indigent	any person	intent	both, locality	fine and/or impris.	
Ibid., sec. 16.159	poor or indigent	any person	intent	state	forfeit, charge	
Ibid, sec. 16.191						adm. action
Minnesota						
Stats (Mason's, 1927) sec. 3163	insane, idiotic or poor	any person	intent	state	fine or impris.	
Ibid., sec. 3173						adm. action
Mississippi						
Code Ann. (1930) sec. 5716	alien passengers likely to become charge	master of ships		state	fine for failure to give surety bond	
Ibid., sec. 5715	infant, lunatic, maimed, aged or infirm, or vagrant likely to become charge	commanders of vessels, etc.		state	forfeit for failure to give surety bond	
Ibid., sec. 5707						adm. action

Chart No. 1—Continued

Citation to State Statutes	Limitations as to persons			Geo. Lim. [5]	Sanctions [6]	Deportation and Removal [7]
	Subject to Restrictions [2]	Prohibition Applicable to [3]	Knowledge Intent [4]			
(1)	(2)	(3)	(4)	(5)	(6)	(7)
Nebraska Comp. Stats. (Supp. 1939) sec. 68-116	poor person	any person	knowledge	both	forfeit	
Nevada Comp. Laws (Hillyer, 1927) sec. 5147	pauper	any person	knowledge	both	forfeit	
Ibid., sec. 5150	pauper or poor or incapacitated or incompetent	any person, firm or corporation or its agents, etc.	both	both	fine and/or impris.	
Ibid. (Supp. 1938) sec. 5144						adm. action
New Hampshire Public Laws (1927) sec. 12	poor and indigent	any person	knowledge	county	fine or impris.	
Ibid., sec. 14	poor and indigent	any person	knowledge	state	fine or impris., charge	
Ibid., c. 106, sec. 31	poor and indigent	any person	knowledge	state	fine or impris. charge	
Ibid., c. 107, sec. 15	persons (passengers) having no settlement	masters of vessels		state		

Chart No. 1—Continued

Citation to State Statutes	Limitations as to persons			Geo. Lim. [5]	Sanctions [6]	Deportation and Removal [7]
	Subject to Restrictions [2]	Prohibition Applicable to [3]	Knowledge Intent [4]			
(1)	(2)	(3)	(4)	(5)	(6)	(7)
Ibid., sec. 17					fine or impris. for failure to give surety bond	
Ibid., sec. 13, 18						court order
New Jersey Stats. Ann. (1940) tit. 44, c. 1, sec. 124	poor person	any person	intent	both locality		
Ibid., tit. 2, c. 103, sec. 6					fine and/or impris.	
Ibid., tit. 44, c. 1, sec. 117						adm. action
New York Cons. Laws Ann. (McKinney's, 1930) sec. 152	destitute person	any person	both	state	fine, charge	
Ibid., sec. 151	poor person	any person	intent	county, locality	fine	
Ibid., sec. 152						court order
Ibid., sec. 59, 73						adm. action

Chart No. 1—Continued

Citation to State Statutes	Limitations as to persons			Geo. Lim. [5]	Sanctions [6]	Deportation and Removal [7]
	Subject to Restrictions [2]	Prohibition Applicable to [3]	Knowledge Intent [4]			
(1)	(2)	(3)	(4)	(5)	(6)	(7)
Rhode Island						
Gen. Laws Ann. (1938) c. 70 sec. 1	poor and indigent	any person	knowledge	state, locality	forfeit	
Ibid., sec. 2	poor and indigent	every railroad co., or owner of steamboat, whose officers and servants		state	charge, forfeit	
South Dakota						
Code (1939) sec. 50 0106	person likely to become public charge	any person		county		
Ibid., sec. 50 9901					fine and/or impris.	
Ibid., sec. 50 0209	pauper	any person	knowledge	both	forfeit	
Ibid., sec. 50 0401						court order
Vermont						
Public Laws (1933) tit. 15, c. 160, sec. 3953	poor and indigent	any person	both	state	fine or impris., charge	
Ibid., sec. 3950	poor and indigent	any person	intent	locality	forfeit, charge	

Citation to State Statutes	Limitations as to persons			Geo. Lim. [5]	Sanctions [6]	Deportation and Removal [7]
	Subject to Restrictions [2]	Prohibition Applicable to [3]	Knowledge Intent [4]			
(1)	(2)	(3)	(4)	(5)	(6)	(7)
Ibid., sec. 3949	person intending to become charge		intent	state locality	fine or impris.	
Ibid., sec. 3951						adm. action
Washington Rev. Stats. Ann. (Remington's, 1933) tit. 67, c. 1, sec. 9992	pauper or poor person	any person	both	state	fine, charge	
Ibid., sec. 9989						adm. action
West Virginia Code Ann. (1937) sec. 626	indigent person	any person	intent	state	fine and/or impris.	
Wisconsin Stats. (Brossard, 1939) sec. 49.06	poor person	any person	intent	state	forfeit, charge	
Ibid., sec. 49.03(9)						court order
Wyoming Stats. Ann. (Courtright, 1931) c. 29, art. 12, sec. 29-1206*a*	pauper, any persons likely to become charge for disability	any person	intent	both	fine	
Ibid., sec. 29-1205*b*						adm. action

a Repealed by Laws (1937), sec. 49, see text of statutes contained in Supplement to this brief.
b Repealed by Laws (1937), sec. 49, and superseded by Laws (1937), sec. 38, see text of statutes contained in Supplement to this brief.

Chart No. 2

Comparative Analysis of State Statutes [1]

Concerning Settlement Laws and Provisions for Interstate Cooperation

Citations to State Statutes	Settlement: Requirements for State, Local Relief [2]	Settlement: Loss of [3]	Settlement: Relief-Lack of Settlement [4]	Provision for Interstate Cooperation [5]
(1)	(2)	(3)	(4)	(5)
Alabama Code (1940) tit. 44, sec. 5	six months			
California Welfare & Institutions Code (Deering, 1937) sec. 2555	three years*			
Id.		absence—one year		
Colorado Stats. Ann. (1935) sec. 16	one year			
Connecticut Rev. Stats. (1930) sec. 1685	four years			
Rev. Stats. (Supp. 1935) sec. 663c			prov. for	
Ibid., sec. 667c				prov. for

Footnotes:

[1] For text of typical settlement law, see p. 66 infra.
[2] Residence requirements for local and state relief.
[3] Provision for loss of settlement.
[4] Provisions for temporary relief to persons without settlement.
[5] Provision for cooperation between states for transfer and removal of persons having no settlement.
For text of typical statute see p. 67 infra.
* The California State Relief Appropriation Act of 1940 makes provision for a settlement period of five years. It is questionable whether the provision may be invoked without reenactment in subsequent appropriations. See Cal. Laws (1940) (First Extraordinary Sess.) C. 45, Sec. 10.

Chart No. 2—Continued

Citations to State Statutes	[1]Settlement: Requirements for State, Local Relief [2]	[1]Settlement: Loss of [3]	[1]Settlement: Relief-Lack of Settlement [4]	Provision for Interstate Cooperation [5]
(1)	(2)	(3)	(4)	(5)
Florida Comp. Gen. Laws (Supp. 1936) sec. 2276 (5)	two years			
Illinois Stats. Ann. (Smith-Hurd, Supp. 1940) c. 107, sec. 17	three years			
Indiana Stats. Ann. (Burns, Supp. 1940) sec. 52-147d	three years			
Ibid., sec. 52-147f		absence—one year		
Ibid., sec. 52-156			prov. for	
Iowa Code (1939) sec. 3828.088	one year			
Kansas Stats. Ann. (Corrick, Supp. 1939) sec. 39-305(4)	local relief—five years			
Ibid., sec. 39-101	state relief—one year			
Ibid., sec. 39-305(7)		local—absence one year		
Ibid., sec. 39-101		state—six months		
Ibid., sec. 39-716				prov. for

Chart No. 2—Continued

Citations to State Statutes	Settlement: Requirements for State, Local Relief [2]	Settlement: Loss of [3]	Settlement: Relief-Lack of Settlement [4]	Provision for Interstate Cooperation [5]
(1)	(2)	(3)	(4)	(5)
Maine Rev. Stats. (1930) c. 33, sec. 1-iv Ibid., sec. 3 Laws (1933) c. 188, sec. 1	five years	absence—five years		prov. for
Massachusetts Laws Ann. (1933) c. 116, sec. 1 Id. Laws. Ann. (Supp. 1940) c. 117, sec. 17, 18	five years	absence—five years	prov. for	
Michigan Stats. Ann. (1940) sec. 16.445 Ibid., sec. 16.168 Ibid., sec. 16.413	state relief—one year local relief—one year			prov. for
Minnesota Stats. (Mason's, 1927) sec. 3161 Id.	two years	absence—one year		

Citations to State Statutes	Settlement: Requirements for State, Local Relief [3]	Settlement: Loss of [4]	Settlement: Relief-Lack of Settlement [4]	Provision for Interstate Cooperation [5]
(1)	(2)	(3)	(4)	(5)
Mississippi Code Ann. (1930), sec. 5703 Ibid., sec. 5708	six months		 prov. for	
Nebraska Comp. Stats. (Supp. 1939) sec. 68–115) Id.	one year	 absence—one year		
Nevada Comp. Laws (Hillyer, Supp. 1938) sec. 5143 Ibid., sec. 5151 03(6)	three years		 prov. for	
New Hampshire Laws (1933), c. 142, sec. 1 Ibid., sec. 2 Laws (1937), c. 202, sec. 6–ix	five years	 absence—five years		 prov. for
New Jersey Stats. Ann. (1940) tit. 44, c. 1, sec. 102 Stats. Ann. (Supp. 1941) tit. 44, c. 8, sec. 42 Ibid., sec. 54 Ibid., sec. 35	 local relief—five years state relief—one year	 local absence—one year state—absence one year	 prov. for	 prov. for

Citations to State Statutes	Settlement			Provision for Interstate Cooperation [5]
	Requirements for State, Local Relief [2]	Loss of [3]	Relief-Lack of Settlement [4]	
(1)	(2)	(3)	(4)	(5)
New York				
Cons. Laws Ann. (McKinney's, 1930) sec. 53	one year			
Ibid., secs. 18 (1-a) 18 (1-c), 65			prov. for	
Ibid., (Supp. 1940) sec. 157				prov. for
Rhode Island				
Gen. Laws Ann. (1938) c. 68, sec. 1 (7)	five years			
Id.		absence—five years		
South Dakota				
Rev. Code (1939) sec. 50 0102 (4)	one year			
Ibid., sec. 50 0102 (6)		absence—thirty days		
Ibid., sec. 50 0103			prov. for	
Vermont				
Public Laws (1933) tit. 15, sec. 3923	one year			
Ibid., sec. 3954				prov. for
West Virginia				
Code Ann. (1937) sec. 626(90), (4)	one year			

Chart No. 2—Continued

Settlement				Provision for Interstate Cooperation [5]
Citations to State Statutes	Requirements for State, Local Relief [2]	Loss of [3]	Relief-Lack of Settlement [4]	
(1)	(2)	(3)	(4)	(5)
Wisconsin				
Stats. (Brossard, 1939) sec. 49.02, (4)	one year			
Ibid., 49.02 (7)		absence—one year		
Ibid., sec. 49.04			prov. for	
Ibid., sec. 49.026				prov. for
Wyoming				
Laws (1937), c. 88, sec. 37	one year			

Typical State Anti-Migratory Law.

New Hampshire Public Laws (1926) c. 107.

Sec. 14. *Bringing Into State: Penalty.* If any person shall bring into this State and leave, or shall so bring with intent to leave, any poor and indigent person having no settlement in the State and no visible means of support, knowing such person to be poor and indigent, as aforesaid, or shall hire or procure such person to be so brought, or shall aid or assist therein, he shall be fined not more than five hundred dollars or imprisoned not more than one year, and shall be liable to any town or county for all sums of money expended by it for the support of such poor and indigent person, to be recovered in an action on the case.

R. S. 67:5, C. S. 71:5, 6. G. S. 75:4, 5. 1878, 31:1.
G. L. 83:5, 7 P. S. 85:13, v. 400.

Sec. 12. *Bringing Into County: Penalty.* If any person shall bring and leave, or bring with intent to leave, any poor and indigent person, having no visible means of support, into any county not chargeable with his support from any other county in which such poor person has resided or been supported, such person not having a legal settlement in any town nor any relation chargeable for his support within the county into which he is brought, knowing him to be thus poor and indigent, he shall be fined not more than two hundred dollars, or imprisoned not more than six months.

R. S. 67:9, C. S. 71:10, G. S. 75:9. G. L. 83:11.
P. S. 85:11, xlv, 139, 181, lv, 339.

Sec. 13. *Removals.* Every such poor and indigent person may be removed, by order of the superior court, from said county into the county from which he was so brought.

R. S. 67:10. C. S. 71:11. G. S. 75:10. G. L. 83:12.
P. S. 85:12. xlv, 139, 181, lv, 339.

Sec. 18. *Removal on Warrant.* Any justice of the superior court, any justice of a municipal court, or any justice of the peace, upon complaint of the overseers of the poor of any place or of either of the county commissioners of any county, in term time or in vacation, may, by warrant

directed to a constable or other person therein designated, cause any pauper not born nor having a settlement in this State, who may conveniently be removed, to be conveyed, at the expense of the county within which such pauper may be, to any other State, or, if not a citizen of the United States, to any place beyond the sea where he belongs.

1862, 2592. G. S. 75:11. G. L. 83:13. P. S. 85:19.

Sec. 15. *Bond for Passengers.* The master of a vessel, having passengers on board who have no settlement in this State, shall not suffer such passengers to land until he gives bond to the State in a sum equal to two hundred dollars for every such passenger, with sufficient sureties, to the satisfaction of the selectmen of the town in which such passengers are landed, conditioned to indemnify and save harmless such town, and every town and county in the State, from all expenses which for three years therafter may arise from such passengers, whose names shall be inserted in the bond.

R. S. 67:6. C. S. 71:7. G. S. 75:6. G. L. 83:8. P. S. 85:16.

Sec. 17. *Penalty.* If any master suffers any such passenger to land before such bond is given, unless the same is dispensed with by the selectmen on application therefor, he shall be fined not more than two hundred dollars for each passenger so landed, or imprisoned not more than one year.

R. S. 67:7. C. S. 71:8. G. S. 75:7. G. L. 83:9. P. S. 85:17.

New Hampshire Public Laws (1926) c. 106.

Sec. 31. *Penalty; Liability.* If any person shall bring into this state and leave in any town, or shall so bring with intent to leave, any poor and indigent person having no settlement in such town and no visible means of support, knowing such person to be poor and indigent as aforesaid, or shall hire or procure such poor and indigent person to be so brought, or shall aid or assist therein, with intent to charge such town with the support of such poor and indigent person, he shall be fined not more than five hundred dollars or imprisoned not more than one year, and shall be liable to any town in which such person has no settlement for all sums of money expended by it for the support and main-

tenance of such poor and indigent person, to be recovered in an action on the case.

1869, 56:1. 1878, 31:1. G. L. 83:6. P. S. 85:14. lxvi, 330.

Typical State Settlement Law.

Cal. Welfare and Institutions Code. (Deering, 1937) Sec. 2555.

Requirements for state residence. A resident of the State of California is a person who comes within all the following descriptions:

(a) Who has lived continuously in the State for a period of three years with the intent to make it his home.

(b) Who, during the three-year period aforementioned, has not received any public or private relief or support from friends, charitable organizations, or relatives other than legally responsible relatives; but time spent in a public institution or on parole therefrom shall not be counted in determining the matter of residence in this or another State.

(c) Who has not lost his residence by remaining away from this State for an uninterrupted period of one year. Absence from the State for labor or other special or temporary purpose does not occasion loss of residence.

Cal. Welfare and Institutions Code. (Deering, 1937) Sec. 2556.

Requirements for county residence. A person who is a resident of California within the meaning of this chapter is a lawful resident of the county wherein he applies for aid if he has resided therein continuously for one year immediately preceding his application for assistance. If the applicant has no such residence, the county wherein he last resided continuously for one year immediately preceding his application shall be responsible for his support. If the applicant has no such year's residence within three years preceding application, that county shall be responsible for his support wherein he was present for the longest time during the three-year period. Time spent in a public insti-

tution or on parole therefrom or in a private charitable institution shall not in any case be counted in determining the matter of county residence.

Typical State Statute Providing for Interstate Cooperation.

Mich. Stats. Ann. (Supp. 1940) Sec. 16.413.

Interstate transportation of indigents, transfer, support; reciprocal agreements with other states; restriction; construction of section.) Sec. 13. The commission is hereby authorized, subject to the approval of the attorney general, to enter into reciprocal agreements with corresponding state agencies of other states, regarding the interstate transportation of indigent persons, and to arrange with the proper officials in this state for the acceptance, transfer and support of persons receiving any form of public aid or relief in other states in accordance with the terms of such reciprocal agreement: Provided, That this state shall not, nor shall any county or any county department of social welfare, in this state, be committed to the support of persons whom the commission determines are not entitled to public support under the laws of this state. This section shall be so interpreted and construed as to effectuate its general purpose to make uniform laws of such states as enact similar legislation.

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A RESOLUTION TO INQUIRE FURTHER INTO THE INTERSTATE MIGRATION OF CITIZENS

Analysis of Material Bearing on the Economic and Social Aspects of the Case of Fred F. Edwards vs. the People of the State of California (No. 17, October Term, 1941, Supreme Court of the United States)

From the Record and Reports of the Select Committee To Investigate the Interstate Migration of Destitute Citizens and the Select Committee Investigating National Defense Migration.

Printed for the use of the Select Committee Investigating National Defense Migration

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Research and analysis by HERBERT ROBACK and LEONARD A. THOMAS, members of committee staff.

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Economic and Social Aspects of the Case of Fred F. Edwards v. the People of the State of California

Introductory Statement

It is our belief that the welfare of the Nation is seriously jeopardized by penal statutes which have the effect—whatever be their intent—of confining or blocking the free flow of human migration in the United States.

It is our hope that in presenting a factual background of the extent and character of the migration of destitute citizens among the States, we can be of some assistance in the solution of a problem which seems likely to have an ever-increasing importance bearing on the internal well-being of the Nation.

The penal statute now before the Supreme Court of the United States *in the matter of Fred F. Edwards* v. *The People of the State of California*, typical of antimigratory statutes in the majority of States, aims not at any offense malum in se, but, by indirect prohibition,[1] seeks to prevent the entry into a State of a citizen of the United States, Duncan, whose only mark of distinction pertinent to the case before the court, is that he is poor.

Who are the Duncans of America? Can they be fitted into the framework of a poor-law system incompatible with the American spirit of independence and equal opportunity, and with the economic facts of our national life?

We have come a long way from the days of a crumbling feudalism, when the manor lords of rural England sought by repressive measures to bind their restless serfs to the land. We do not have today the flogging, branding, mutilation, and death penalty provided by early "vagrancy statutes," for the wandering poor. We do not now, as we did in our earlier history, auction the poor like chattel to willing bidders, apprentice and indenture them, house them with the criminal and the insane, subject them to the degrading test of the workhouse.[2]

We have not outlived, however, the legacy of the English poor laws which chained men to their native places and kept strangers on the move. Our statutes of settlement, removal, and exclusion, and our administrative practices bear a startling likeness to their antecedents 400 years ago. Without substantial modification, we can apply a finding of a monumental study on the English poor laws to treatment of the poor in twentieth-century America:

> * * * Throughout the whole period dealt with in this volume, persons "without visible means of subsistence," whether or not they applied for relief,

[1] The parties to this controversy are in complete accord that the issue presented ultimately involves the constitutional rights of the migrant Duncan and not those of the defendant himself. Appellee's brief, dated April 21, 1941, p. 3; appellant's brief, dated February 17, 1941, pp. 14-15. (See Appendix K, p. 69, for compilation of all State antimigratory legislation, including exclusion laws and removal statutes.)

[2] D. M. Schneider, The History of Public Welfare in New York State, 1609-1866, Chicago, 1938; M. D. Creech, Three Centuries of Poor Law Administration, Chicago, 1936; S. P. Breckinridge, The Illinois Poor Law and Its Administration, Chicago, 1939; G. A. Browning, The Development of Poor Relief Legislation in Kansas, Chicago, 1935.

and however their destitution was brought about—whether from old age, sickness, or unemployment—underwent, in effect, what Roman law termed a "capitis diminutio," and ceased to enjoy the rights of the ordinary citizen. It was no longer a question of relieving the sufferings of "God's poor." Instead of the pious Christian washing the feet of beggars, whom he would meet in Paradise, a public official was required, at the least cost, to suppress a common nuisance. . . . This conception of "destitution" as a public nuisance had unforeseen results in the mind of the unpaid and annually elected parish officer. He became obsessed with the notion of ridding his parish of the nuisance at the least possible expense to the rate-payers to whom he was responsible. Seeing that the men, women, and children concerned could not be destroyed like choughs and mice, the easiest and cheapest way was to thrust the pauper, or potential pauper, across the parish boundary, into the outer world. Hence the immediate and ever-recurring zeal displayed by the overseer to put in operation the preposterous law of 1662 for the forcible removal to their places of settlement, of poor persons "not belonging to" his own parish whom he chose to think likely, at some future time, to become chargeable to the parish. Hence the eagerness, a century later, to pervert the Vagrancy Acts into a method of "clearing" the parish of beggars and other "unemployed" persons, by "passing" them, at the expense of the counties that they traversed, round and round the kingdom, and, wherever practicable, pushing them across the border into Scotland, or dispatching them overseas to Ireland or Jersey.[3]

There were voices even then that cried out in the wilderness against the onerous restrictions on the mobility of the underprivileged "who live by labor." Adam Smith, the great economic philosopher, called for

> the repeal of the law of settlements, so that a poor workman, when thrown out of employment in one trade or in one place, may seek for it in another trade or in another place, without the fear either of a prosecution or of a removal. * * *[4]

The prefatory note to a careful study of three centuries of poor law administration in Rhode Island states:

> Basic, too, are the obsolete and archaic provisions of a poor law which still places a penalty upon a railroad, a ship, or an individual for bringing into the State a person who may become destitute; or which provides that a person, although he may not have asked for assistance, may be removed by a constable or a town sergeant from a town in which he has thought to better his condition; or which penalizes a citizen who provides a residence for a person whom the town council deems undesirable; or carries a provision for disfranchising a citizen who has become destitute to such a degree that public aid is necessary. Whatever justification such principles may have had in the settlement and growth of a State during the seventeenth, eighteenth, and nineteenth centuries, their value has become obsolete in the social and economic organization of the twentieth century.[5]

The factual basis for the assertion that the statute in the case at bar "has become obsolete in the social and economic organization of the twentieth century" is hereinafter set forth.

MIGRATION IS A DOMINANT CHARACTERISTIC OF AMERICAN LIFE

Geographic mobility has always been a habit of the American people. In earlier days the westward movement was its most striking manifestation. Cheap and fertile land attracted pioneers seeking a new eco-

[3] Sidney and Beatrice Webb, English Local Government: English Poor Law History: Pt. 1. The Old Poor Law. London, 1927, p. 407.

[4] Adam Smith, An Inquiry Into the Nature and Causes of the Wealth of Nations, First Modern Library Edition, New York, 1937, p. 137. Theo. Ruggles, Esq., justice of the peace for the counties of Essex and Suffolk, noted in 1794: "Mr. Hay, in his plan, published in 1735, would have all notion of parochial settlement abolished, as being the root from which every evil relating to the poor sprung; every parish being in a state of expensive war with the rest of the Nation, regarding the poor of all other places as aliens, and caring not what becomes of them. * * *." (History of the Poor, London, 1794, vol. 2, pp. 88-89.)

[5] Creech, op. cit., author's preface, p. xv. The conflict of ancient pauper statutes with the facts of contemporary destitution was dramatically signalized in controversy as to right of franchise by depression relief recipients. The constitution of New Jersey (art. 2), for example, provides that "no pauper * * * shall have the right of an elector." Protest over this exclusion as applied to relief recipients resulted in their being permitted to vote. See New York Times, April 12, 1934, September 11, 1936.

nomic foothold. In the wake of the more adventurous pioneer came farm families to cultivate the soil and tradespeople to service the agricultural population. New waves of migration followed upon the old. Those who abandoned their holdings to seek greener pastures were replaced by less advantaged newcomers.[6] Today, farm-to-farm migration takes place with a frontier gone and opportunity diminishing;[7] nevertheless the tradition of mobility persists. More than a million American families change farms every year.[8]

Migration to the cities proceeded simultaneously with the building of the West.[9] When public lands no longer remained open for settlement, the urbanward movement intensified.[10] Industrial jobs and the cultural attractions of urban living drew millions of rural youth. In 1870 almost three-fourths of the American people lived in rural areas; today this proportion is much less than one-half.[11] The net movement from farms within the last 50 years probably numbers 20,000,000 persons.[12] The two-way stream of migration greatly exceeds the net migration balance. Thus the 6,000,000 persons moving from farms to cities during 1920–30 represented the difference between some 13,000,000 moves to, and 19,000,000 moves away from, farms.[13] Assuming that every migrant moved only once during the 10-year period, the sum of movements in both directions approximated the total number of persons on farms, or a quarter of the Nation's entire population.[14]

Movements, whether rural or urban, crisscross State lines. A conservative estimate places the number of workers annually crossing State lines at 2,000,000.[15] Inclusion of family members and dependents affords an estimate of 4,000,000 persons migrating across State lines each year in pursuit of industrial employment alone.[16]

Migrants enter and leave every State in the Union. Behind this flux are discernible more permanent patterns of relocation. Since 1850, when the data were first gathered, each census "has shown that more than one-fifth of the native Americans have migrated from the States of their birth and were living in other States." [17] Thus in 1930 about 25,000,000 native Americans were living outside the

[6] Interstate Migration, Report of the Select Committee to Investigate the Interstate Migration of Destitute Citizens, pursuant to H. Res. 63, 491, 629 (76th Cong.), and H. Res. 10 (77th Cong.), H. Rept. No. 369, Washington, 1941, p. 298 (hereinafter cited as Interstate Migration, Report of Select Committee); Carl C. Taylor and others, Disadvantaged Classes in American Agriculture, U. S. Department of Agriculture, Social Research Report No. VIII, Washington, 1938, p. 72; Conrad Taeuber and Carl C. Taylor, The People of the Drought States, Works Progress Administration Research Bulletin, Washington, 1937, p. 29; James C. Malin, Turn-over of Farm Population in Kansas, Kansas Historical Quarterly, vol. 4, No. 4, November 1935, pp. 339-372; Donald G. Hay, Rural Population Migration in the Northern Great Plains, Lincoln Hearings of Select Committee, p. 1396.

[7] Interstate Migration, Report of Select Committee, pp. 286 ff.; Farm Tenancy, Report of the President's Committee, Washington, 1937, pp. 6, 7.

[8] Interstate Migration, Report of Select Committee, p. 289; Carl C. Taylor and others, op. cit., p. 76.

[9] Interstate Migration, Report of Select Committee, p. 281; Harold F. Dorn, Migration and the Growth of Cities, Social Forces, March 1938, vol. 16, No. 3, pp. 328-337.

[10] U. S. National Resources Committee, Problems of a Changing Population, Washington, 1938, p. 83.

[11] W. S. Thompson and P. K. Whelpton, Population Trends in the United States, New York, 1933, p. 24. Since 1920 the rural population has been divided by the census into farm and nonfarm. About one-fifth of the population in the United States now lives on farms.

[12] Interstate Migration, Report of the Select Committee, pp. 281, 287. Based on estimates by O. E. Baker, of the U. S. Department of Agriculture, Rural-Urban Migration and the National Welfare, Annals of the Association of American Geographers, June 1933, vol. 23, No. 2, p. 68, and by U. S. Department of Agriculture, Farm Population Estimates, January 1, 1940 (mimeographed).

[13] Interstate Migration, Report of Select Committee, p. 282; U. S. Department of Agriculture, Farm Population Estimates, January 1, 1940 (mimeographed).

[14] Ibid.; C. E. Lively and Conrad Taeuber, Rural Migration in the United States, Works Progress Administration Research Monograph XIX, Washington, 1939, p. 23.

[15] John N. Webb, Internal Migration: Asset or Liability? Proceedings of the National Conference of Social Work, New York, 1939, pp. 245, 246.

[16] Interstate Migration, Report of Select Committee, p. 462. This estimate refers to migrants covered by the old-age insurance provisions of the Social Security Act.

[17] U. S. Department of Commerce, Bureau of the Census, Fifteenth Census of the United States: 1930, vol. II, p. 135.

States of their birth.[18] Though all States have exchanged populations, the general drift of movement has been from south to north and from east to west.[19] The metropolitan regions have absorbed the greater part of this migration.[20]

Migration to California today is a continuation of the historic westward trend.[21] California is a State virtually built up by migration. From less than 400,000 in 1860, the population of California has come to be almost 7,000,000 by 1940, a growth of about 1,800 percent. The rate of growth has been over 4 times that of the population for the whole country. Through the 8 decades migration has contributed nine-tenths of the population increase[22] (see chart). In 1930, 2 of every 3 persons living in California were born elsewhere.[23]

The influx of 2,000,000 persons to California in the boom decade of the 1920's was "the greatest single movement in the entire history of the country, one of the greatest in the world * * *."[24] California grew during this decade as much as in the first 60 years of its development from a frontier State.[25] It is popularly supposed that migration to California within the past few years is an unusual occurrence. In 1930–40 the volume of movement was little more than half that of the preceding decade. A survey conducted by the United States Department of Agriculture shows that the net migration into California during the 1930's numbered about 1,100,000 persons.[26]

MIGRATION GENERALLY PROCEEDS FROM AREAS OF LESSER TO AREAS OF GREATER ECONOMIC OPPORTUNITY

People may move in search of pleasure or health, or because of a restless urge to wander, but the great majority of American migrants are job seekers.[27] The broad patterns of movement as well as the short-time shifts are determined by the changing distribution of employment opportunities. Manufacturing and commercial jobs are centered in and around the large cities.[28] Declining opportunity in agriculture and the extractive industries has created large labor re-

[18] Prof. Frank Lorimer, Background of Internal Migration, New York Hearings of Select Committee, p. 11; U. S. National Resources Committee, op. cit., p. 85.

[19] Fifteenth Census of the United States: 1930, p. 139; R. D. McKenzie, the Metropolitan Community, New York, 1933, p. 12.

[20] Lorimer, New York Hearings of the Select Committee, p. 11; Dorn, op. cit.; U. S. National Resources Committee, op. cit., p. 90.

[21] Interstate Migration, Report of Select Committee, p. 304, "Additions to California's population through the entrance of these hundreds of thousands of persons represent a continuation of the normal westward movement of population, which has been a factor in California's growth since it became a State" (report of the migrant committee, California State Chamber of Commerce, San Francisco Hearings of Select Committee, p. 2758).

[22] Ibid., p. 305; Seymour J. Janow, Volume and Characteristics of Recent Migration to the Far West, one of several reports presented by the staff of the Bureau of Agricultural Economics, U. S. Department of Agriculture at the San Francisco Hearings of the Select Committee, pp. 2269 ff. (These reports will be collectively referred to in the text as the Department of Agriculture migration survey.)

[23] Fifteenth Census of the United States: 1930, vol. II, p. 147. According to the population study of the U. S. National Resources Committee (op. cit., p. 89) "The movements of native-born persons to California has been unequaled in volume by similar movements to any other State. In 1930 the number of residents in California who had been born in other States was more than 600,000 greater than the total population of Philadelphia, the third largest city of the Nation. The number of persons who were born elsewhere but were living in California in 1930 was about one-third of the total population of Canada. * * *"

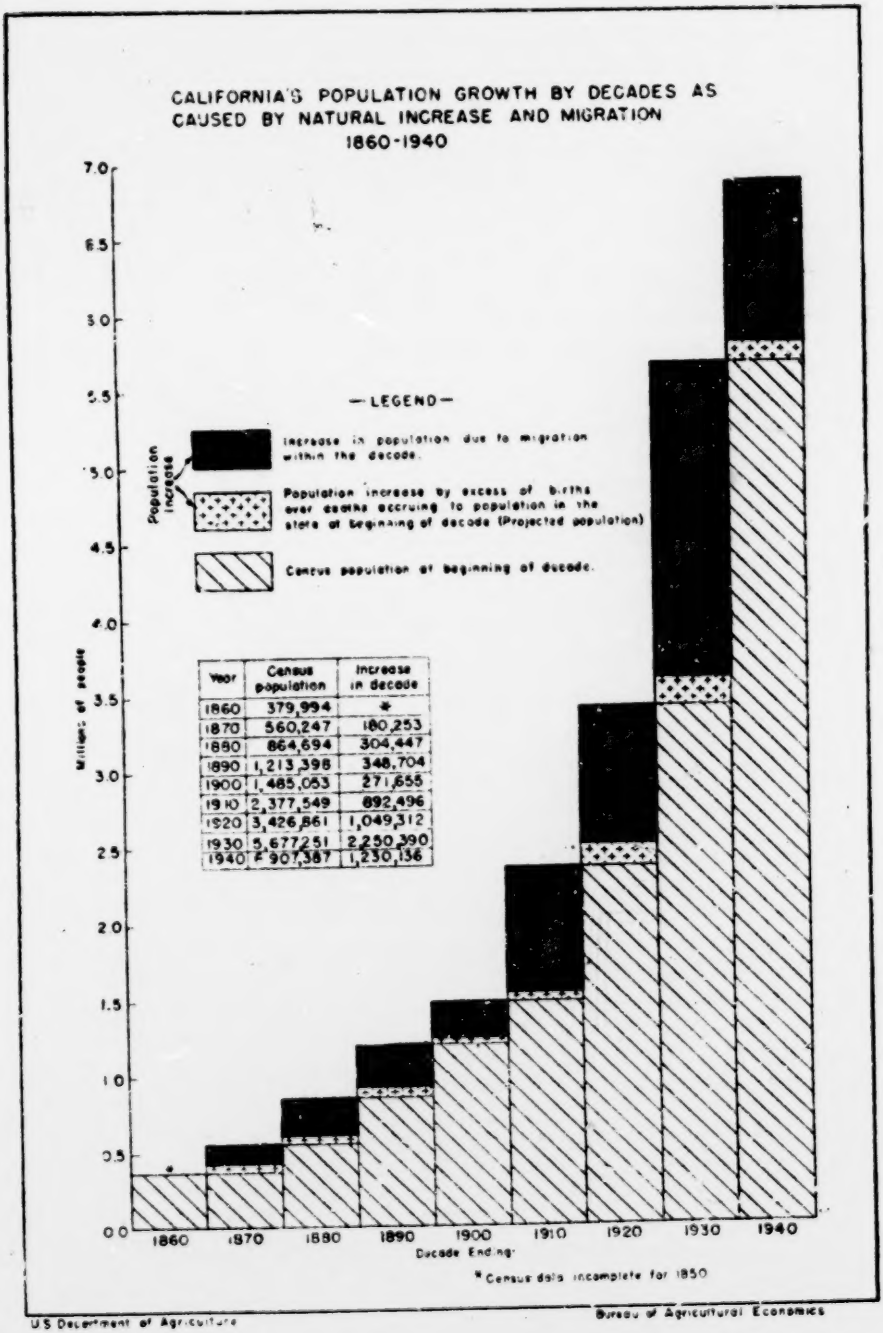
[24] C. W. Thornthwaite, Internal Migration in the United States, Philadelphia, 1934, p. 18.

[25] Edwin Bates, Migration Into California in the 1920's, Los Angeles Hearings of Select Committee, p. 3068.

[26] Interstate Migration, Report of Select Committee, p. 304; Janow, San Francisco Hearings of Select Committee, p. 2274.

[27] Interstate Migration, Report of Select Committee, p. 9; John N. Webb, Migrant Families, Works Progress Administration Research Monograph XVIII, Washington, 1938, p. 8; John N. Webb, The Transient Unemployed, Works Progress Administration Research Monograph III, Washington, 1935, p. 50.

[28] U. S. National Resources Committee, op. cit., p. 72; McKenzie, op. cit., pp. 53 ff; Thompson and Whelpton, op. cit., p. 32; Carter Goodrich and associates, Migration and Economic Opportunity, Philadelphia, 1936, ch. VII; Interstate Migration, Report of Select Committee, pp. 676, 677.



Year	Census population	Increase in decade
1860	379,994	*
1870	560,247	180,253
1880	864,694	304,447
1890	1,213,398	348,704
1900	1,485,053	271,655
1910	2,377,549	892,496
1920	3,426,861	1,049,312
1930	5,677,251	2,250,390
1940	6,907,387	1,230,136

serves and a migration trend toward urban-industrial centers.[29] The trend of population movement has been "away from areas of economic insecurity and low levels of living." [30] The study on population redistribution by Goodrich and others found that—

> in general, the poorer regions gave up population to the richer ones, and within sections it was the more prosperous communities—largely urban and industrial—which drew people from the surrounding areas.[31]

Receiving areas do not always maintain their economic advantage. Industries decline; land, timber, and mineral resources become depleted. New resources are discovered and developed; new industries spring up, and old ones migrate elsewhere in order to compete on a better footing.[32] The relocation of industry must be attended by the migration of workers, else they become stranded and submerged groups without an economic base.[33]

Migration to California has been a response to developing opportunity in the far West and to declining opportunity elsewhere. The great migration of the 1920's was overwhelmingly urbanward in direction.[34] The rapid growth of the petroleum and moving-picture industries provided jobs to many. Numerous entrants into white-collar and service occupations attested to the expansion of the California economy. More recently airplane manufacturing and other new industrial developments have drawn job recruits from other areas.[35]

In agriculture, and in industry, job opportunities call forth seasonal as well as permanent relocations of workers. In some areas migratory routes are well defined, frequently traversing many States. In other areas workers tend to settle down in makeshift shelters near producing centers, operating from the home base in irregular migratory circuits.[36]

Every State in the Union contributes labor to every other State. More markedly, areas of meager opportunity send forth migrants pursuing temporary jobs provided by the seasonal rhythm or agricultural growth and industrial production. Migrants from Southern States annually follow the ripening harvest of crops along the Atlantic seaboard.[37] Seasonal workers from Kentucky, Tennessee, and other States of the Appalachian plateau regularly move into the agricultural and industrial sections of Michigan, Indiana, Ohio.[38] Each year thousands of Texas workers depart for the beet and vegetable crops and for the factories of these North Central States.[39] In the States of the far West, and particularly in California,[40] migrations take place in considerable numbers to conform the labor supply to the varying demand.

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[29] F. M. Vreeland and E. J. Fitzgerald, Farm City Migration and Industry's Labor Reserve, Work Projects Administration, National Research project, rept. No. 1-7, Philadelphia, 1939, ch. III; Lorimer, New York Hearings of Select Committee, p. 12.

[30] U. S. National Resources Committee, op. cit., p. 105.

[31] Carter Goodrich and others, Migration and Planes of Living, 1920-34, Philadelphia, 1935, p. 4.

[32] Migration of Workers, Preliminary Report of the Secretary of Labor pursuant to S. Res. 298 (74th Cong.), U. S. Department of Labor, Washington, 1938, vol. I, ch. V (mimeographed). Goodrich and others, Migration and Economic Opportunity, op. cit., chs. VI-VIII; Interstate Migration, Report of Select Committee, pp. 674-675.

[33] Migration of Workers, Preliminary Report of the Secretary of Labor, op. cit., p. 41.

[34] Bates, Los Angeles Hearings of Select Committee, p. 3071; W. T. Cross and D. E. Cross, Newcomers and Nomads in California, Stanford, 1937, p. 21.

[35] Bates, Los Angeles Hearings of Select Committee, pp. 3079 ff.

[36] Interstate Migration, Report of Select Committee, pp. 326, 344-345.

[37] Migratory Labor in New Jersey, report of the New Jersey Conference of State Departments on Migratory Labor, New York Hearings of the Select Committee, pp. 75 ff.; Interstate Migration, Report of Select Committee, p. 354; Proceedings of the Interstate Conference on Migratory Labor, Baltimore, Md., February 12-15, 1940; Atlanta, Ga., December 17-18, 1940.

[38] Chicago Hearings of Select Committee, pp. 977 ff., pp. 1106 ff., etc.; Interstate Migration, Report of Select Committee, pp. 353, 498.

[39] Oklahoma City Hearings of Select Committee, pp. 1798 ff.; pp. 1859 ff.

[40] "The greatest and most incessant seasonal migration in this country centers in California" (Migration of Workers, Preliminary Report of the Secretary of Labor, op. cit., p. 84).

Agricultural workers move from the valleys of California to the Hood River Valley of Oregon and the Yakima Valley of Washington, the Arkansas Valley of Colorado, and the pea fields of Idaho, and to the Salt River Valley of Arizona. Peak demands in California and the Yakima Valley of Washington in September come 2 months after the maximum labor demands in Oregon, when the demand for labor in Oregon has fallen 30 percent from its peak in July. Maximum labor demand in Arizona occurs in November, when the requirements of agriculture in California, Oregon, and Washington are approximately at their lowest point. In California, for every 100 workers required in September, only 39 are needed in December; for every 100 workers required in the second week of September in the Yakima Valley, less than 2 are needed in the week of December. This is some index to the variations in labor demand that prompt the ceaseless migrations of thousands of agricultural laborers within the Western States.[41]

AS A PROCESS OF ECONOMIC ADJUSTMENT MIGRATION BENEFITS RECEIVING AREAS AS WELL AS SENDING AREAS, AND THEREBY ENHANCES THE NATIONAL WELFARE

The redistribution of population proportions the people to the economic resources of the country. The beneficial effects of the great migrations that took place between farm and city, 1920–30, have been pointed out as follows:

> In bettering themselves, the removal migrants of the twenties were increasing the earning level of the country as a whole. By moving to areas where their labor was in better demand they took a necessary step to correct partially the maldistribution of population, as compared to resources, which the changing economic structure had produced. * * * It is probable that real earnings were increased by at least 5 percent during the whole decade as a result of the transfer of both farm operators and farm laborers from agricultural to urban employment.[42]

A leading authority on migration has characterized the adjustive value of migration in these terms:

> Migration is not only a constitutional right of every American citizen; it is an economic necessity in the American economic system. This country is an economic unit with a predominantly national market. Industries, investments, goods, and labor respond to this economic and legal fact by crossing State lines at will. Such movements are necessary to develop, maintain, and stabilize the national economy. The economic order is a continually adjusting and readjusting equilibrium which presupposes a flow of industries to resources, a flow of goods to markets, and a flow of workers to developing industries.
>
> The causes of migration are, therefore, so fundamental and pervasive as to leave little expectation that the population may be immobilized.
>
> As new areas develop and old ones decline, workers must migrate in order to develop the new resources and to relieve the older communities of surplus workers. The "push" of stranded communities resulting from shifting work opportunities are accentuated by the "pull" of new developments in industry. After employment has shifted from one area or one type of industry to another, migration gives rise to fewer problems than would the continuance of stranded communities as the result of insufficient migration.
>
> Our population increase is slowing down, but migration retains its importance. Without great migratory movements we cannot equalize our unequal flow of population increase, redress our regional inequalities, balance the demand for labor between changing employment capacities, nor "use our human and material resources to the best advantage." We must remember that by large migration the frontier was settled; by foreign immigration the American labor supply was recruited; and it is mainly by spontaneous internal migrations that the future needs of population redistribution in the United States must be served.
>
> *Vagrancy laws to the contrary, the fact that a man has little or no money in his pocket is no valid reason for depriving him of his right to migrate across State lines.* The right to move may seem a poor substitute for real security, but it must not

[41] Seymour J. Janow and William Gilmartin, Labor and Agricultural Migration to California, 1935–40, Monthly Labor Review, July 1941, vol. 63, No. 1, pp. 18–34.

[42] Migration of Workers, Preliminary Report of the Secretary of Labor, op. cit., pp. 39, 40. Footnotes in original omitted.

be forgotten that for many of our citizens it has proved the road to increased well-being.[43] [Italics supplied.]

The recent study of migration to the far West by the United States Department of Agriculture emphasizes that population changes and income changes have kept company. Indeed, relative income changes in some areas often have been proportionately higher than changes in the number of people.[44] California and the other States of the far West exemplify these trends.

Westward migration during the 1930's has more frequently been regarded as a movement away from depressed areas than as a population movement toward areas of industrial development and relative economic expansion. Yet the relative economic position of the far West in the Nation has kept pace with the expansion of its population. California, Oregon, and Washington combined had, in 1920, 5.26 of the national population and received 7.19 of the national income. In 1930 these three States contained 6.67 percent of the national population and accounted for 8.66 of the national income. By 1938 the three States had approximately 7.24 percent of the population of the Nation, and their share of the national income had increased to 9.34 percent. The per capita income position of the population in these three States has been substantially maintained in its advantaged position relative to the rest of the United States for the past two decades. (See table.) It is not possible to say with certainty what would have been the effect of the economy of the far West if no migration to this region had taken place in the depression decade of the 1930's. However, from evidence reviewed above, the extension of economic activities and the expansion of population seem to have a synchronous existence. What would happen to the population of the far West without migration can be quite accurately estimated.[45]

Percentage of the national population in the Pacific region (California, Oregon, and Washington) and percentage of the national income paid to persons in the Pacific region, 1919–38

Year	Pacific region (California, Oregon, and Washington)			Year	Pacific region (California, Oregon, and Washington)		
	Percentage of the national population [1]	Percentage of the national income [2]	Ratio of Pacific region per capita income to United States average per capita income		Percentage of the national population [1]	Percentage of the national income [2]	Ratio of Pacific region per capita income to United States average per capita income
1919	5.19	6.78	1.31	1929	6.53	8.73	1.34
1920	5.26	7.19	1.36	1930	6.67	8.66	1.30
1921	5.40	7.77	1.44	1931	6.74	8.54	1.27
1922	5.54	7.94	1.43	1932	6.81	8.82	1.29
1923	5.68	8.07	1.42	1933	6.88	8.93	1.30
1924	5.82	8.25	1.42	1934	6.95	8.56	1.24
1925	5.96	8.37	1.40	1935	7.02	8.74	1.25
1926	6.10	8.54	1.39	1936	7.09	8.90	1.28
1927	6.24	8.56	1.37	1937	7.17	9.11	1.27
1928	6.39	8.49	1.33	1938	7.24	9.34	1.29

[1] Population from U. S. Census. Change in population between census periods distributed evenly over the decade.

[2] National and regional income figures from the National Industrial Conference Board Studies in Enterprise and Social Progress, November 1939, pp. 116–117.

Source: U. S. Department of Agriculture, Migration Survey, San Francisco Hearings of Select Committee, p. 2314.

[43] Dr. Rupert B. Vance, Probable Trend of Migration from the Southeast, Montgomery Hearings of Select Committee, pp. 414, 415.

[44] Janow, San Francisco Hearings of Select Committee, p. 2313.

[45] Ibid, p. 2314.

Summarizing the findings of the migration survey, the report concludes with respect to migration and economic opportunity:

> Income data clearly indicate the Western States as affording more per capita opportunities than the areas from which the majority of the migrants have come. As the great majority of newcomers show every indication of remaining in the West it is clear that the alternative action of returning to the areas from which they migrated is not going on because the far West is a more hospitable environment than the area from which they came.
>
> Then from the point of view of the migrants and from considerations of national welfare westward migrations during the 1930's can probably be regarded as generally beneficial. Removal to the West has resulted in a larger proportion of the population of the Nation living in a region of higher per capita income.[46]

The areas of meager opportunity from which people migrate in large numbers are generally characterized by low levels of living and high birth rates. Opposite conditions exist in areas of considerable immigration. States with large rural population have higher birth rates than those predominantly urbanized and industrialized. Farm families are producing children twice as fast as the city families and in numbers far above their replacement needs. The urban population as a whole at present is failing to replace itself.[47] Farm-city migration is necessary to make up this deficit. Throughout the history of our Nation such migration has probably contributed half of the urban population.[48]

In California we have already noted that migration, largely to urban centers, has played the leading role in the population growth. California has one of the lowest birth rates of any State in the Union. In terms of the number of children under 5 years of age per 1,000 women aged 20–44 years, California ranks at the bottom.[49] With certain assumptions regarding birth and death rates, population trends for the future can be estimated. If no people were to enter or leave California at all, the total population would have already begun to decline by 1940, and it would be less in 1950 than it was in 1935.[50]

MIGRANTS HAVE INITIATIVE, YOUTH; ARE HIGHLY EMPLOYABLE

At a time when the complex factors making for economic change and labor mobility were less well-known, migrants were often regarded as people with psychological or moral quirks.[51] It is now a recognized fact that migrants are normal Americans, possessing initiative and determined to improve their lot by moving.[52] Large numbers of them are in families, uprooted, dispossessed, seeking to make a new start.[53] Migrants are younger, on the average, than the general work-

[46] Janow, San Francisco Hearings of Select Committee, p. 2321. Footnotes in original omitted. "California has not begun to attain its potentialities for population, agriculture, foreign trade, and industry. There are new frontiers right in the United States for new industries and higher standards of living for all the people. The West still offers a challenge." (San Francisco Daily News, editorial, May 11, 1939.)

[47] Interstate Migration, Report of Select Committee, p. 284; Lorimer, New York Hearings of Select Committee, p. 13; Lively and Taeuber, op. cit. ch. III; United States National Resources Committee, op. cit. pp. 112, 133–134.

[48] Dorn, op. cit.

[49] Janow, San Francisco Hearings of Select Committee, pp. 2314–2315.

[50] Ibid.

[51] John N. Webb, the Migratory Casual Worker, Works Progress Administration Research Monograph VII, Washington, 1937, pp. 2, 19; Interstate Migration, Report of Select Committee, p. 300.

[52] Interstate Migration, Report of Select Committee, p. 9; Webb, Migrant Families, op. cit., p. XVI; statement of Hon. Frances Perkins, Secretary of Labor, Washington Hearings of Select Committee, pt. 8, p. 3330; testimony of Philip E. Ryan, ibid., p. 3093; statement of Myron Falk, executive secretary, [illegible] Council on Migratory Labor and Transients, Montgomery Hearings of Select Committee, p. 678.

[53] "The migrants are old-stock Americans, hard workers, used to grubbing the soil against adversities. If put to work, they will be self-supporting, rear children, produce and buy goods, increase the general prosperity." (San Francisco Daily News, editorial, May 11, 1939.)

ing population. They center in the age groups most highly employable.[54] As stated in a report on transients by the California Relief Administration:

> Study of most of the matter dealing with transiency discloses the astonishing and persistent factor that persons in the youthful prime of working life—between the ages of 24 and 35—constitute the backbone of the transient load. * * * Another consistent factor from which some comfort may be drawn is the willingness to work on the part of an overwhelming number of the transient population. * * *[55]

Those who are presented with the actual or potential burden of caring for destitute migrants frequently contend that persons migrate for purposes of obtaining relief.[56] Findings of impartial students and welfare workers do not support this contention.[57] Since most States impose complicated and lengthy residence requirements before giving relief, it could be argued with equal justification that fear of losing relief restrains people from moving.[58] People move in search of jobs. Failure to find employment in the new community may force them to seek public assistance.

Migrants to California in the 1930's were drawn from all sections of the Nation and from all walks of life. They represented, with minor exceptions, a cross section of the occupational structure in both the States of origin and in California.[59] In this wise they were responding to differential opportunity as between California and the States of origin. In California a certain amount of occupational shifting took place to more closely conform the migrant population to the labor needs of the State.[60] Many migrants who previous to moving had been on relief were able to improve their position by finding employment in California. Others were not so fortunate and had no recourse but to seek public aid. These less fortunate people were predominantly in the agricultural and less-skilled occupations, reflecting the fact that the burdens of a declining economy fall with the heaviest impact on the least advantaged sectors of the economy.[61] The Department of Agriculture migration survey found that—

> Of the male family heads who, before migration, were unemployed, on Work Projects Administration, or receiving relief, 36 percent were reported to be still in these groups in California. Twenty-one percent of the former farm laborers, 19 percent of the unskilled laborers, and 16 percent of the former farmers were reported as unemployed, on Work Projects Administration, or on relief in California. In contra , only 7 percent of the former clerical workers and 3 percent of the former professional persons were reported as unemployed, on Work Projects Administration, or receiving relief in California. By this index, the agricultural and unskilled labor groups were the least successful in establishing themselves in California.[62]

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[54] Migration of Workers, preliminary report of the Secretary of Labor, op. cit., p. 15; Webb, Migrant Families, op. cit., pp. 97, 98, 108; Webb, the Transient Unemployed, op. cit., p. 25; D. S. Thomas, Migration Differentials, Social Science Research Council Bulletin 43, New York, 1938, p. 11; Lively and Taeuber, op. cit., p. 15.

[55] California State Emergency Relief Administration, Transients in California, San Francisco, 1936, pp. 287, 288 (mimeographed).

[56] See appellee's brief, dated April 28 1941, pp. 16-17.

[57] Interstate Migration, Report of Select Committee, p. 9; Lively and Taeuber, op. cit., p. 132; Webb, Migrant Families, op. cit., p. 51; Cross and Cross, op. cit., p. 19; Ralph Astrosky, director, Division of Shelter Care, Department of Welfare, New York City, New York Hearings of Select Committee, p. 201; Charles Alspach, Washington Hearings of Select Committee, p. 4234; Dorothy B. de la Pole, staff associate, National Travelers Aid Association, Chicago Hearings of Select Committee, p. 939; Joel D. Hunter, general superintendent, United Charities of Chicago, Chicago Hearings of Select Committee, p. 948.

[58] Testimony of Neil H. Jacoby, chairman, Illinois Emergency Relief Commission, Chicago Hearings of Select Committee, pp. 823-824; Dorothy B. de la Pole, ibid, p. 933.

[59] Interstate Migration, Report of Select Committee, p. 308; Janow, San Francisco Hearings of Select Committee, pp. 2269 ff.

[60] Ibid.

[61] Varden Fuller, Employment of Migrants As Hired Laborers in Western Agriculture, San Francisco Hearings of Select Committee, p. 2377.

[62] Janow, San Francisco Hearings of Select Committee, p. 2311.

WITHIN RECENT YEARS WIDESPREAD UNEMPLOYMENT AND DESTITUTION HAVE AFFECTED MIGRANTS WITH SPECIAL SEVERITY

The economic depression beginning in 1929 was unprecedented in the incidence of its impact. Unemployment mounted to staggering proportions. The number of unemployed persons was estimated to reach 16,000,000 at one time in 1933.[63] The total never fell below 12,000,000 in any year between 1930 and 1935. In 1937, after business revival and recession, a national census of unemployment recorded approximately 10,060,000 persons out of work.[64] Even today, when industrial expansion in the national-defense program is proceeding apace, there are still probably 5,000,000 persons without jobs.[65]

Addition of family members and dependents to the numbers estimated above can only suggest the extent of suffering and privation endured by American families. Relief cases multiplied as the meager resources of unemployed wage workers were exhausted. In July of 1933 almost 4,000,000 families, totaling over 15,000,000 persons, were forced on public relief rolls. The terrible winter of 1934–35 found 20,000,000 persons, or one-sixth of the Nation's population, dependent on relief.[66]

This court stated in 1937 when sanctioning the power of the State to legislate a wage for the minimum necessities of individuals:

> We may take judicial notice of the unparalleled demands for relief which arose during the recent period of depression and still continue to an alarming extent despite the degree of economic recovery which has been achieved. It is unnecessary to cite official statistics to establish what is common knowledge through the length and breadth of the land.[67]

Income data gathered in 1935–36 show that of the 29,000,000 families in the United States, 14 percent received less than $500 during the year, 42 percent received less than $1,000 and 65 percent received less than $1,500. Considered in terms of consumer units (families and single individuals), one-third of the Nation received incomes of less than $780 during 1935–36. Four million families and single individuals in this lower third received relief during the year, but over 9,000,000 families and single individuals in this lower third, subsisting on incomes below any minimum standard of health and decency, received no relief whatever.[68]

The national character of unemployment and destitution was evidenced early in the depression by the need for Federal assistance. Traditional methods of relief-giving by local public and private welfare agencies were hopelessly inadequate to cope with the destitution attendant upon mounting unemployment. Private, voluntary contributions gave way in large part to public funds supplied to local communities by State emergency relief administrations. "By 1932, however, the number requiring relief had unquestionably reached such proportions in many States that Federal assistance was necessary to prevent rioting, bloodshed, and actual starvation." [69] Loans were

[63] H. A. Millis and R. E. Montgomery, Labor's Risks and Social Insurance, New York, 1938, p. 19.
[64] Ibid., pp. 19, 20.
[65] Statement of Corrington Gill, Assistant Administrator, Work Projects Administration, Washington Hearings of Select Committee, pt. 16, p. 6486.
[66] Millis and Montgomery, op. cit., pp. 56, 57.
[67] *West Coast Hotel* v. *Parrish* 300 U. S. 379, 399 (1937).
[68] U. S. National Resources Committee, Consumer Incomes in the United States, Washington, 1938, pp. 2, 9.
[69] Millis and Montgomery, op. cit., p. 101.

first made to States and municipalities to help finance relief; these were later supplanted by outright grants, administered by a Federal agency.[70]

It has been said of the American people that they will not stand still and starve.[71] Unemployment during the 1930's started great distress migrations. Rural-urban movements were reduced in volume, but to the population dammed up on farms were added newcomers fleeing from industrial unemployment.[72] Millions of persons took shelter in subeconomic retreats, subsisting on poor lands, or eking out a miserable living as migratory wage workers. A leading student of population has generalized the migration trends of the 1930's in these terms:

> From 1930 to 1940, migration has been in large a movement from areas of high productivity but heavy unemployment to areas of lower productivity but greater security, provided by poorly paid regular or part-time employment, or through subsistence farming, or both. In other words, it has been the substitution of underemployment for the risk of unemployment. * * *
>
> Millions who have retreated in search of meager security have suffered a severe drop in level of family living, but they have not caused conflict or created special public problems. They have therefore attracted little attention. The same may be said of many young people coming of age in areas of meager opportunity, who would normally have migrated to more favorable situations but have been restrained by fear of failure to find employment.
>
> There has, however, been a counter movement, which has stirred public attention. People have burst forth from areas suffering from the slow rot of economic deterioration, without awaiting the assurance of real economic opportunity elsewhere—only to encounter new types of frustration. These people, fleeing an ever-deepening underemployment, have sought areas of greater opportunity and have, in many cases, found only unemployment. These are the "economic refugees" of our very imperfect economic order.[73]

The California migration in the past decade included many economic refugees, for, as we have noted, conditions at their worst in that State were still better than those from which many migrants came. Population displacement was particularly heavy in the Great Plains States.[74] A long train of economic disasters, intensified by drought conditions in the midst of the depression, accelerated the westward trek. The causes of this migration were analyzed by the Governor of California, as follows:

> The Dust Bowl migrants are for the most part casualties of change. *They are not vagrants or paupers or hoboes.* They are American citizens who have been thrown out of gainful employment and self-supporting occupations largely as a result of the profound dislocations which have taken place and are continuing to take place in American agriculture. These changes have to do largely with such matters as the displacement of workers through mechanization; the curtailment of crop acreage; the loss of export markets in agriculture; and numerous other factors. * * * It has been generally estimated, for example, that with restricted demand and increased efficiency, we can now produce the normal requirement for agricultural products with approximately one and a half million fewer workers in agriculture than were needed in 1929. * * * It has likewise been

[70] Ibid., E. A. Williams, Federal Aid for Relief, New York, 1939; J. C. Brown, Public Relief 1929-39, New York, 1940.

[71] Lincoln Hearings of Select Committee, p. 1349 and passim.

[72] Interstate Migration, Report of Select Committee, p. 280; Lively and Taeuber, op. cit., chap. II; Vreeland and Fitzgerald, op. cit., ch. IV; W. S. Thompson, Research Memorandum on Internal Migration in the Depression, Social Science Research Council Bulletin No. 30, New York, 1937; U. S. National Resources Committee, Problems of a Changing Population, op. cit., pp. 105 ff.

[73] Lorimer, New York Hearings of Select Committee, p. 12, cf. the following: "The dramatic and pathetic spectacle of thousands of Americans in flight from abject poverty toward an unknown and unattainable security, such as occurs during a depression, confuses the social implications of migration and beclouds its economic function." (Collis Stocking, Bureau of Employment Security, Social Security Board, Reallocation of Population and the Defense Program, paper presented before the ninth annual meeting of the Population Association of America, May 17, 1941, printed in Washington Hearings of Select Committee, pt. 17, p. 6278.)

[74] Interstate Migration, Report of the Select Committee, pp. 313, 323.

estimated that in the next decade technological changes may result in the displacement of another million and a half workers. The Russell Sage Foundation on February 10 of this year, as a result of its investigation, stated that within the immediate future an outgoing migration of from 1,500,000 to 6,000,000 people might be anticipated from 4 major depressed areas in the United States.[75] [Italics supplied.]

Destitute migrants who "break loose like the tumbleweed every year," [76] are blown by a wind that rose half a century ago. The Department of Agriculture migration survey concluded with regard to the westward flight from the Great Plains:

> In some respects, the migration to the far West during 1930–39 may be envisaged as a self-generating correction of an unwise distribution of population which took place in the absence of a national policy for migration. That section of the Middle West made up by the States of Oklahoma, Kansas, Nebraska, South Dakota, and North Dakota was the area which received the largest population increases in the Nation by internal migration during the period from 1880–1920. Much of this settlement was made on a foundation of a type of farming now generally recognized as unsuited to the area. The result of this unwise settlement can in part be seen in the substantial emigration from this region which took place during the depression decade of the 1930's; the population in each of these States was less in 1940 than it had been in 1930.[77]

The jalopy of the contemporary migrant became a too-familiar sight on the public highways.[78] Quarantine inspectors at the California borders began to keep count of these automobile families seeking haven in the State. From the middle of 1935, when the count was started, until the present, parties totaling more than half a million persons in need of manual employment entered California by motor vehicle. The vast majority of these were native white Americans in family groups.[79] Removal and seasonal migrations to California in the past 5½ years included many more persons than those enumerated by quarantine inspectors.[80] The border count of half a million needy migrants merely suggests the prevalence of distress and destitution among America's depression pioneers.[81]

Agricultural migrants to California during the 1930's comprised but a fourth of the migrating population.[82] We have noted, however, that they bore their full measure of hardship. In a sample of these families studied by the United States Department of Agriculture, it was found that:

> The net worth at the time of arrival of the typical migrant family included in this study was only slightly above $100; approximately two-thirds had less than $200. Of average net worth 38 percent was in cash, 34 percent in the value of the car, and the remainder in clothing, household goods, and incidentals.[83]

The migrants for the most part made direct and purposeful moves. The majority crossed intervening States without delay and settled in the California county of initial choice.[84] Their intense desire to

[75] Statement of Hon. Culbert L. Olson, San Francisco Hearings of Select Committee, p. 2238.
[76] C. M. Evans, Oklahoma City Hearings of Select Committee, p. 1933.
[77] Janow, San Francisco Hearings of Select Committee, p. 2331. Footnotes in original omitted.
[78] E. J. Rowell, Drought Refugee and Labor Migration to California in 1936, Monthly Labor Review, December 1936, vol. 43, No. 6, pp. 1355-1363; Migration of Workers, preliminary report of the Secretary of Labor, op. cit., ch. VI; Paul S. Taylor, Interstate Migration of Refugee Workers, Unemployment and Relief, hearings before a Special Committee to Investigate Unemployment and Relief, U. S. Senate, 75th Cong., 3d. sess., pursuant to S. Res. 36, vol. 2, appendix 17, exhibit 1, pp. 1595, ff.
[79] Janow and Gilmartin, op. cit.
[80] Ibid.; Report of migrant committee, California State Chamber of Commerce, San Francisco Hearings of Select Committee, p. 2757.
[81] Quarantine inspectors taking the border count enumerated automobile parties whose appearance and belongings obviously placed them in the group of those in need of manual employment.
[82] Janow, San Francisco Hearings of Select Committee, p. 2303.
[83] Fuller, San Francisco Hearings of Select Committee, p. 2374.
[84] Interstate Migration, Report of Select Committee, p. 325; Janow, San Francisco Hearings of Select Committee, p. 2280.

find a home has found tragic expression in the peripheral slums and shacktowns that are springing up near California cities.[85] According to the Department of Agriculture migration study:

> * * * Relocating families employed in seasonal agricultural jobs have had to improvise the best shelters they could out of the very small means available to them. * * * Nevertheless, they represent endeavors to establish permanency by people who are trying to escape the hardships and the undesirability of a migratory and homeless existence.[86]

In short-distance moves near the home base or in longer migrations up and down the coast, the agricultural migrants attempt to piece together sufficient jobs to yield subsistence. There are more hired workers on farms in California than in most other States in the Union.[87] California agriculture requires large numbers of laborers for short-peak periods. It is extremely difficult, however, for migratory workers to dovetail seasonal agricultural jobs.[88] Opportunities in alternative nonagricultural employment are limited.[89] Consequently, employment is intermittent and earnings extremely low. Summarizing the conditions and prospects of migrant agricultural families in California, the Department of Agriculture survey states:

> Under present conditions of farm organization and as long as agricultural workers remain ineligible for social-security benefits, public assistance performs a very great function in the economic stability of farm workers. It must be emphasized, also, that public assistance as it is received, is equally a subsidy to farm operators who employ seasonal labor. Assistance received by workers operates as a subsidy paid by the public in general to farm employers inasmuch as a pool of labor is kept constantly available to work at modest wage rates.[90]

MIGRANTS HAVE BEEN TREATED AS CRIMINALS AND VAGRANTS, AND ATTEMPTS HAVE BEEN MADE TO BAR THEIR ENTRANCE INTO CERTAIN STATES

Large influxes of underprivileged newcomers to a community frequently create misunderstanding and conflict.[91] The interests of employers seeking great surpluses of labor for peak seasonal operations do not always coincide with the interests of other established residents who may feel the effects of job competition or of increased tax burdens for relief. It is not uncommon among employers themselves to help

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[85] Interstate Migration, Report of Select Committee, p. 326; Janow, San Francisco Hearings of Select Committee, pp. 2292, 2293; Carey McWilliams, chief, California State Division of Immigration and Housing, Housing Conditions Affecting Migrants in California, San Francisco Hearings of Select Committee, pp. 2541 ff.; Catherine Bauer, secretary, California Housing Association, The Housing of California's Agricultural Workers, San Francisco Hearings of Select Committee, pp. 2570 ff.

[86] Fuller, San Francisco Hearings of Select Committee, p. 2368.

[87] Testimony of Dr. Paul S. Taylor, hearings before the Subcommittee of the Committee on Education and Labor, under S. Res. 266, 76th Cong., 2d sess., pt. 47, p. 17227.

[88] California State Relief Administration, Migratory Labor in California, San Francisco, 1936, p. 49 (mimeographed); Migration of Workers, Preliminary Report of the Secretary of Labor, op. cit., pp. 85-86.

[89] Fuller, San Francisco Hearings of Select Committee, p. 2370.

[90] Ibid., p. 2376. Cf. the following conclusion of the California State Relief Administration study (Migratory Labor in California, op. cit., p. 212): "Thus, we see California's second largest industry not only subsidized by relief funds, but responsible for untold human misery and human wastage. Not only are present relief expenditures and present suffering to be considered, but the insufficient and improper food, the improper conditions of living, the insufficient and improper schooling promise a human harvest which cannot but add further burdens to the State and the Nation."

Dr. Paul S. Taylor states: "There is a long tradition in California of the necessity of a large supply of labor available at low wages for short-time employment. It is as old as statehood itself. * * * This policy of 'hire and fire,' without responsibility for carrying the overhead cost of supporting their laborers between seasons is a contributory factor to that acute specialization which makes employment so highly seasonal and laborers so mobile." (Hearings before a Subcommittee of the Committee on Educat[illegible] and Labor, under S. Res. 266, 76th Cong., 2d sess., pt. 47, pp. 17288-17289.)

[91] Philip Ryan, Migration and Social Welfare, Russell Sage Foundation, New York, 1940, ch. V.

drive out of the community "tramps" and "bums" who, when needed for seasonal work, were solicited and accepted as useful citizens.[92]

In former times many of California's seasonal enterprises relied upon a succession of alien groups who were obliged to accept substandard conditions of work and who were credited with a propensity to conveniently disappear when the season's work was done.[93] Native American citizens do not easily fit into the old pattern.[94] Seeking homes and jobs in California by the hundreds of thousands, they have been at times the object of a hostile and unreasoning sentiment in some quarters.

This sentiment has varied in intensity with the numbers of needy newcomers, and with the availability of funds or facilities for their care. It has found expression in measures designed to drive migrants from the State or to bar their entry. The futility of these measures is predetermined by the failure to recognize that no single State can insulate itself against great migratory movements initiated by convulsions throughout the entire economy. Indeed, if all States were to act concertedly in erecting barriers to the entrance of migrants from other States, destitution would be nailed down, but it would not be eliminated.

In practice, destitute migrants become pawns in a dreary game of shifting responsibilities traditionally known as "passing on." California, unable to "pass on" the unemployed, has passed them back, thereby "adding to their distress and to the hostility of other States." [95] Mounting relief burdens have motivated States to raise their statutory settlement requirements for public assistance.[96] Nonresidents receive temporary care at best, pending forced removal to their place of settlement. "Human beings are shifted around like so much cargo." [97]

States have exercised their police power on the mistaken assumption that problems economic in their origin can literally be handled by police methods.[98] In addition to enacting new restrictive statutes, old laws have been stretched to cover new conditions. Barriers to free movement have been built up on a foundation of "crime prevention." Vagrancy laws have been invoked against migrants in indiscriminate fashion. Justification for driving migrants from the borders of States has also proceeded under the guise of violations of penal

[92] Webb, The Migratory-Casual Worker, op. cit., p. 2. The author reports the comment of the Los Angeles Times on March 13, 1936, with reference to the Los Angeles police blockade of the California border in an attempt to rid the State of indigent transients: "If a labor shortage should develop later on, it would be easy to modify the regulations so that seasonal workers might be admitted. * * *" Webb further reports the sardonic comment of the San Diego Sun, March 23, 1936: "The only time a bum is expected to come to California is when we need him as a harvest hand. What right has he to come between seasons?" (The Migratory-Casual Worker, op. cit., p. 2, footnote 1.)

[93] Interstate Migration, Report of Select Committee, p. 379, Varder. Fuller, The Supply of Agricultural Labor as a Factor in the Evolution of Farm Organization in California, hearings before a Subcommittee of the Committee on Education and Labor, under S. Res. 266, 76th Cong., 3d sess., pt. 54, exhibit 8762-A, pp. 19777-19898.

[94] Fuller, San Francisco Hearings of Select Committee, p. 2368. "The very nature of California's agriculture, which requires migration to secure employment, makes establishment of legal 'residence' and exercise of the suffrage difficult. In their efforts to achieve California citizenship, these native American migratory farm laborers, coming originally like the majority of us Californians, from other States, face obstacles erected by a hostile community. Officials raise the question whether living in a camp erected by the Federal Government to provide decent conditions for those who migrate to serve our crops can be accepted as legal residence for voting, even after all requirements of the law are met. Newspapers publish articles which can only have the effect of deterring migrants from exercising the right of suffrage. * * *" (Testimony, Dr. Paul S. Taylor, hearings before a Subcommittee of the Committee on Education and Labor, under S. Res. 266, 76th Cong., 2d sess., pt. 47, p. 17235.)

[95] Beecroft and Janow, op. cit., p. 483.

[96] Interstate Migration, Report of Select Committee, p. 650. See appendix A, charts showing residence requirements for settlement in the various States 1901-40.

[97] Justice Burr, delivering the opinion of the court in *Adams County* v. *Burleigh County* (291 N. W. 281 (1940)). See appendix I for full opinion.

[98] See Nels Anderson, Men on the Move, Chicago, 1940, p. 255; Ryan, op. cit., p. 56.

statutes prohibiting the carrying of concealed weapons, evading the payment of railroad fares, operating motor vehicles without licenses, transporting into a State indigent persons or persons likely to become a public charge, and the like.[99]

At times the exclusion of destitute outsiders has been inspired by executive action of State Governors. The road patrol of State police operating in Florida during the winter months of 1934, 1935, and 1936 was proclaimed and organized by the Governor of that State. Notice was served that no more transients would be admitted to Florida camps and that those trying to enter the State without jobs or visible means of support would be turned back. The Governor warned that those transients successful in entering the State would face "arrest, which would be unpleasant and unprofitable to all concerned." [1]

Acting on numerous complaints that it was undemocratic and unconstitutional to prevent United States citizens from passing at will from one State to another, and responding to the argument that a welcome should be extended to rich and poor alike, a new Florida Governor abolished the border patrol in 1937, saying:

> I don't think it's constitutional to tell a man he can't go from one State to another. Just because a man's poor and wants to find a job in Florida is no reason for keeping him out of the State. Why, some of the worst people that come to Florida in the winter time are racketeers in fine limousines and Pullman cars. There are plenty of crooks in fine automobiles.[2]

Colorado, by executive order in April 1936, proclaimed martial law along a mile-wide strip of territory on the southern border and called out National Guardsmen—

> * * * to prevent and repel the further invasion of this State by any such aliens, indigent persons, or invaders, and to repel and return all such persons * * * to the State from which they shall have entered such area [3]

According to two observers—

> The blockade extended from Utah to Kansas, with every entrance point from Oklahoma and New Mexico under the scrutiny of the guardsmen. The men had orders to stop all cars, busses, and trains with the exception of first-class limiteds to search them for "undesirables." Money and financial responsibility was the test laid down by Governor Johnson for entry into the State. This executive order was withdrawn after a few weeks, when "the Governor found it impossible to continue the policy." [4]

The zeal of public officials in keeping out destitute newcomers has been matched by private bodies and by self-constituted extra-legal authorities. The most dramatic example of such action was the abortive "bum blockade" set up in California by the Los Angeles Police Department with the support of the Los Angeles Chamber of Commerce, and other organizations. Cooperation was sought from the railroad companies and permission obtained to search freight trains crossing the border. Sheriffs of border counties were contacted and requested to deputize Los Angeles police officers as sheriffs of these

[99] See appendix J, excerpt on California border patrol from California State Relief Administration, Transients in California, San Francisco, 1936 (mimeographed).

[1] Florida Times-Union, December 7, 1934. For excerpts from files of the Florida Times-Union, and New York Times, relating to the border patrols at the Florida State line, during 1934, 1935, and 1936, see Appendix F, p. 40.

[2] New York Times, September 11, 1937. See Appendix E, p. 40.

[3] Beseroft and Janow, op. cit., p. 480. For full text of executive order see Appendix F, p. 43.

[4] Ibid. (Footnotes in original omitted.) For excerpts from files of Denver Rocky Mountain News relating to the border patrols at the Colorado state line during 1936, see Appendix G, p. 44.

counties. Some counties agreed and others refused to deputize the officers, but officers from Los Angeles were sent even to those refusing

By February 1936 it is reported that 125 police officers had been detailed to points of likely border entry by highway or railroad. The tragi-comic details of the border patrol activities are set forth in a survey made by the California State Relief Administration, printed in appendix J.

The stationing of Los Angeles police officers at the 16 border points evoked unfavorable publicity and protest from many public and private agencies or individuals.[5] Careful distinction was not made between residents and nonresidents nor between criminals and destitute persons.[6] Among those stopped and questioned by officers were two members of the California Senate.[7]

> The chief of police claimed that he was protecting the city (Los Angeles) from an influx of criminals, and stated that 65 percent of those stopped had criminal records. He admitted to a member of the [relief administration] survey staff that he considered anyone to have a criminal record if he had ever been arrested for vagrancy or spent a night in jail. He was not willing to allow a worker from the survey to examine the information in the office regarding the patrol.[8]

One John Langan, a California resident returning from a business trip to Arizona, sued the police chief of Los Angeles city in the Federal court asking that he be enjoined from "stopping, molesting, questioning, fingerprinting, arresting, or otherwise interfering with plaintiff's entering California, or with plaintiff's traveling in California, or with plaintiff's traveling between any of the States bordering upon California."[9]

A request from the Los Angeles Chamber of Commerce that the border-patrol activities of the police department be endorsed by the attorney general of California was refused. The attorney general held that Los Angeles police officers were not legally eligible for appointment as deputy sheriffs of other counties and that exclusion of certain classes from the State required legislative action.[10] He stressed United States Supreme Court dicta on the right of free ingress and egress to and from States and reminded the chamber of California's membership in the sisterhood of States.[11]

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[5] Janow and Beecroft, op. cit., p. 479; California State Emergency Relief Administration, Transients in California, op. cit., p. 26; (See appendix J, p. 58); Los Angeles Herald-Express, February 4 and 5, 1936. (See appendix C, p. 31.)

[6] Janow and Beecroft, op. cit., p. 174, footnote 15.

[7] California State Emergency Relief Administration, Transients in California, op. cit., p. 261. (See appendix J.)

[8] California State Emergency Relief Administration, Transients in California, op. cit., p. 261 (see appendix J). Cf. Mr. Davis' analysis of the motives for migration to California and the police experience with transients in his report on Transiency in southern California (Los Angeles Hearings of Select Committee, pp. 3015, 3017):

> "* * * There are only two sources of employment in the State; to wit: First, private industry and agriculture; second, public-works projects. We know that private industry and agriculture can readily recruit sufficient workers who are permanent residents of the State. The Federal Government requires that those working upon public-works projects be residents of the political subdivision sponsoring the project. Therefore, it may be readily concluded that the indigent transients invading California does so [sic] do so for the sole purpose of seeking employment, but also to forage his [sic] way, through criminal operations or otherwise, to sustain himself.
>
> * * * * * * *
>
> "Police experience indicates that a large percentage, over 50 percent in fact, of the incoming transients have previously been convicted of one or more criminal offenses, the remaining 50 percent present another large group of potential offenders."

[9] See appendix H, p. 50.

[10] The attorney general stated that provisions of existing laws subjecting persons to arrest immediately upon their entry into the State did not "confer upon peace officers the right to forcibly prevent such entry."

[11] The opinion of the attorney general concerning the legality of the border patrol is printed in appendix B, p. 29. Cf. the following: "Flaying critics of Los Angeles' swift war on jobless, penniless winter nomads, Mayor Frank L. Shaw today revealed a legal opinion by City Attorney Ray L. Chesebro stating that the police reinforcements of the border patrol was authorized by the city's charter." (Los Angeles Herald-Express, February 5, 1936).

Los Angeles Police Chief James E. Davis, reporting in March 1936 on indigent alien transients, claimed great success for the border patrol in terms of "millions of dollars" saved the State and the wholesale reduction of crime.[12] He recommended that stopping of transients be continued by certain State departments. In the middle of April Los Angeles police officers were withdrawn from border stations.[13]

The present Governor of California, in assessing the role played by the border patrol and subsequent attempts to bar migrants from the State, has said:

> When the border patrol was abandoned, an effort was made to get at the situation through legislative action, and in the 1935 session of the legislature, assembly bill No. 2459 was introduced * * * This bill, if enacted, would have had the effect of preventing so-called paupers, indigents, and transients from entering the State. It might also be added, in this connection, that on January 23, 1939, assembly bill No. 1356 was introduced, which, if enacted, would have had the same effect. I have cited these early approaches to the problem that were made in California as indicative of its seriousness at that time. *The failure of the border patrol, waiving the question of its legality, is, of course, the best proof of the futility of all such measures.*[14] [Italics supplied.]

THE PLIGHT OF THE MIGRANT AS A NATIONAL PROBLEM HAS BEEN RECOGNIZED BY PRIVATE AND PUBLIC BODIES AND BY THE FEDERAL GOVERNMENT

The poverty and destitution characterizing migration in the 1930's made clear the national scope of the problem, and the futility of State or local efforts to achieve a solution by driving migrants from their border. Private welfare agencies had long been concerned with mitigating the harsh effects of the settlement laws. Their efforts were directed largely to improving the practices involved in the transportation of dependent persons to their place of legal settlement.[15] Early in the 1930's private agencies concerned with the care of transients were overburdened and the need for Federal assistance became imperative. Special studies undertaken in these years showed how widespread was the plight of the migrant and how great his need.[16]

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[12] The report is printed in the Los Angeles Hearings of Select Committee, pp. 2978 ff. See also Mr. Davis' report on Transiency in Southern California, December 1, 1937, ibid., pp. 3013 ff. For criticism of the accuracy and relevance of the data contained in the report on Indigent Alien Transients, see California State Emergency Relief Administration, Transients in California, op. cit., pp. 264, 265 (printed in appendix J).

[13] Mr. Davis reported that: "The following year [1936–37] the department was not in a position to carry on such an [State-wide] operation. Instead, the Los Angeles Police Department arranged to police the municipal boundaries of the city of Los Angeles, particularly at the points of ingress of the railways, to arrest all evaders of railroad fares and persons violating any of the sections of the vagrancy statute. Men were stationed on 24-hour watch at the points of ingress of the freight trains, who stopped and searched each train headed toward Los Angeles. During the period from October 29, 1936, to January 23, 1937, this detail arrested 2,558 railroad evaders and vag roamers. Those arrested, upon conviction and sentence, were placed at manual labor upon firebreaks, roads, and other public works of a similar nature. This program was a great deterrent to the influx of transients in the city of Los Angeles." (Indigent Alien Transients, Los Angeles hearings of select committee, p. 3018.)

[14] Hon. C. L. Olson, San Francisco Hearings of Select Committee, p. 2236. The legislative bills referred to by Governor Olson are reprinted in appendix D. Assembly bill No. 2459, introduced May 16, 1935 (amended in assembly March 31, 1939), is entitled "An act to prevent the entry into California of paupers, vagabonds, indigent persons, persons likely to become public charges, providing means for enforcing the same and prescribing penalties for the violation thereof, declaring the urgency thereof, and providing it shall take effect immediately." Assembly bill No. 1356, introduced January 23, 1939, is entitled "An act to prevent the entry into the State of California of paupers, vagabonds, and fugitives from justice, providing for enforcement of this act, and prescribing penalties for the violation thereof."

[15] See, for example, Jeffrey R. Brackett, The Transportation Problem in American Social Work, Russell Sage Foundation, New York, 1936.

[16] Committee on Care of Transient and Homeless, "After Five Years—the Unsolved Problem of the Transient Unemployed, 1932–37", May 1937, reprinted in New York Hearings of Select Committee, p. 52. Among these studies might be mentioned: Family Welfare Association of America, Care of the Homeless in Unemployment Emergencies, 1920; U. S. Department of Commerce, A Community Plan for Service to Transients, 1931 (prepared by National Association of Travelers Aid Societies); U. S. Children's Bureau, Memorandum on the Transient Boy, printed in Twenty-fifth Annual Report of the Chief of the Children's Bureau, June 30, 1932.

All over the land, along the right-of-way of the railroads, on the margin of towns, great and small, and on the city dumps, "jungles" sprang up where men and boys—and sometimes women and girls—lived in a hand-to-mouth, debasing existence, following a manner of life which could not be considered tolerable when compared with the vaunted standards of living of the American people.

The spectacle of a native-born American from the Atlantic seaboard finding himself in California an unwelcome applicant for relief; or of the Negro born and reared in the Cotton States finding himself on the banks of the Hudson or the Monongahela, thrown out of a job as a houseman or a steel hand, with no legal right to help: these and other evidences of the dislocations of thousands of people from their home environment and normal ties brought to the point of germination the idea that if indeed the Union of States created a Nation, then, by virtue of that national unity the responsibility was vested first in the National Government and then in the States to insure that no citizen of this Nation should be left without assistance in his time of need. [17]

Following a meeting of the National Conference of Social Work in 1932, the Committee on Care of Transient and Homeless was established to devise a constructive program for destitute migrants. The members of the committee were drawn from various national agencies concerned with "transiency or homelessness," from universities, from the field of social research, and from private life. These people set about the task of gathering and analyzing the available data on transiency. In January and March of 1933 they attempted an enumeration of homeless and transient persons. The 1-day census taken in March and covering 765 cities enumerated 201,596 nonresidents, distributed in every State of the Union but especially numerous in California, Florida, and the Southwest.[18] "The Committee in 1933 presented facts at congressional hearings on relief in support of its contention that the special problem of the transient or unsettled person was a Federal responsibility and that the needs could not be met without financial assistance from the Federal Government." [19]

The representations of the Committee on Care of Transient and Homeless bore fruit in the provision included in the Relief Act of 1933 that States could obtain additional grants from the Federal Government to aid needy persons lacking legal settlement in any one State or community.[20] The outlines of a "national program of relief to the homeless and transient destitute" were formulated by the Federal Emergency Relief Administration and communicated to all Governors and State emergency relief administrations. It was pointed out that "every State in the Union contributes in a greater or lesser degree to the problem of transiency in every other State"; therefore, the States should undertake in a constructive spirit to deal with a problem national in its implications, for which Federal funds were now available.[21] Transients were defined as needy persons less than 12 months in the State.[22]

[17] Committee on the Care of Transient and Homeless, New York Hearings of Select Committee, p. 52.
[18] Committee on the Care of Transient and Homeless, New York Hearings of Select Committee, pp. 52, 53.
[19] Ibid., p. 53.
[20] Section 4 (c) of the Federal Emergency Relief Act of May 1933 (Public, No. 15, 73d Cong.) provided:
"That the administration may certify out of the funds made available by this subsection additional grants to States applying therefor to aid needy persons who have no legal settlement in any one State or community."
[21] Committee on Care of Transient and Homeless, New York Hearings of Select Committee, pp. 53–54.
[22] Since the term "legal settlement" was not defined in the Relief Act, and since the varying provisions of State settlement laws were impracticable as a basis for providing relief, the more or less arbitrary definition of a "transient" as a needy persons resident in the State less than 12 months was laid down. Three categories of the homeless population were distinguished: (1) Local homeless residents, (2) State homeless, more than 12 months in the State, (3) transient homeless, less than 12 months in the State. It was contemplated that the first two categories would be cared for under other sections of the act (See Webb, The Transient Unemployed, op. cit., ch. I).

By October 1934, the District of Columbia and every State except Vermont were operating transient services. Transient relief centers were set up in the large cities and along the main-traveled routes. Assistance given to needy transients included food, clothing, shelter, medical care, education and recreation, transportation to place of settlement, and useful work projects.[23] The maximum transient case load numbered about 200,000 unattached persons and 50,000 family groups.[24] Regarding the cost of the program from its inception through December 1935, it is reported:

> Total obligations incurred amounted to $85,779,319, covering materials, supplies, and equipment purchased, relief extended, and administration and miscellaneous costs.[25]

The Federal Emergency Relief Administrator authorized a State program for transients in California on September 19, 1933.[26] The prevalence of needy transients in California and the part that the State played in soliciting Federal aid are noted in the following statement by the Governor of California presented to the Select Committee on Migration:

> * * * A 1-day census of transients was taken on September 1, 1933, which indicated that at that time there were present in California approximately 101,174 destitute transients. Prior to this date a State-wide conference had been called on the transient problem, at San Francisco, by the State emergency relief commission for August 17 and 18, 1933. To indicate how serious the problem was at that time, it is sufficient to point out that the railroad having the largest mileage in California reported nearly a quarter of a million evictions of trespassers from trains within the State of California in the first 6 months of 1933. During this 7-month period, 49 trespassers had been killed and 117 others injured on this one railroad in California. The consensus at this conference was unanimous that Federal aid must be solicited and to this end California took the initiative in urging congressional action.
>
> The gravity of the situation in California was, of course, one of the important considerations that led to the creation of the Federal Transient Service, which went into effect in connection with the passage of the Federal Emergency Relief Act of 1933. During the period from May 12, 1933, until September 20, 1935, when the Federal Transient Service was discontinued, the rigor of the situation in California was considerably abated. How important this Service was in California is indicated by the fact that although California, according to the census of 1930, had only 4.7 of the total population of the Nation, it was found that the California case load of the Federal Transient Service accounted for about 13.5 percent of all transients aided by the Service. At times during this period the Federal Transient Service was caring for as many as 38,815 transients in California.[27]

With the liquidation of Federal transient aid, States began to set up border patrols and "bum blockades." In California some people

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[23] The operations of the Federal transient program are described in Interstate Migration, Report of Select Committee, pp. 506 ff.; Committee on Care of Transient and Homeless, New York Hearings of Select Committee, pp. 53 ff., and in a special Round-table Hearing of Select Committee, Washington hearings, pt. 10, pp. 4217 ff. The operation of the Federal transient program in California is described in California State Relief Administration, Review of Activities 1933-35, San Francisco, 1936, chs. VIII, IX.

[24] Webb, The Transient Unemployed, op. cit., p. 1; Williams, op. cit., p. 148. A study of the Federal Transient Program states: "No accurate measure of the number of persons who actually constituted the transient army is available. The peak registration for 1 month was reached in August 1934, a total of 395,384 unattached individuals and 16,252 family groups being reported for that moment. At no time did the midmonthly census exceed that of February 1935, when the record stood at 300,460." (Committee on Care of Transient and Homeless, New York City, May 1937, New York Hearings of Select Committee, p. 501.

[25] Monthly report of the Federal Emergency Relief Administration, December 1, through December 31, 1935, p. 79, cited by Committee on Care of Transient and Homeless, New York Hearings of Select Committee, p. 57.

[26] California State Emergency Relief Administration, Transients in California, op. cit., p. 24.

[27] Hon. C. L. Olson, San Francisco Hearings of Select Committee, p. 2236. From the beginning of the Federal transient program through December 31, 1935, Federal grants to California for transient relief totaled almost $9,000,000. This does not include an additional final grant. See footnote 28 below (California State Emergency Relief Administration, Transients in California, op. cit., p. 30). Total unemployment relief expended in California from January 1, 1933, to December 31, 1935, amounted to $235,000,000, two-thirds of which came from the Federal Government (California State Relief Administration, Review of Activities, 1933-35, op. cit., p. 25).

justified these police barriers because Federal aid for [illegible] been withdrawn.[28] Public officials, overburdened with relief problems, kept soliciting aid from the Federal Government.

Throughout 1937 the problem became increasingly acute, with conferences being held on the problem of transient and migrant care in San Francisco, Tulare, San Jose, and Los Angeles in the summer, and numerous applications and petitions were sent to Washington for Federal assistance throughout the year.[29]

Despite the attempts at exclusion by the border patrol, and the drive against "squatter" and "jungle" camps that sprang up everywhere in the State, the transient army continued the westward march. The distress of migratory families, particularly those with rural background, was in part alleviated again by Federal assistance in the form of direct relief grants, migratory camps, and medical aid.[30] The role of the Federal Government in relieving California's transient problem through the Farm Security Administration camp program and in other respects was recently emphasized by the Governor of California:

Yet despite all of the concerted activities, and despite the fact that, in the years intervening since 1931, thousands of migrants had been transported back to their place of origin, the influx into California continued. The emergency of 1937 was, in fact only abated by prompt and effective action on the part of the Farm Security Administration which, in the spring of 1938, inaugurated its medical-aid program for indigent agricultural workers, and later in the same year began its program of grants-in-aid which, for the time being at any rate, relieved the pressure upon the State and county governments in California. Had it not been for this action on the part of the Farm Security Administration and its continuance to the present time, the situation would be much graver in California than it is today. From the preceding outline, it is, I think, apparent that California has been torn by agitation over the migrant issue more or less continuously from 1931 to date, with periodic crises which have arisen from time to time which have only been overcome in each instance by Federal intervention [31]

Apart from the help extended by the Federal Government through the Farm Security Administration, benefits are generally withheld from migrants, as the following pages show. A comprehensive program of public assistance embracing migrants as well as nonmigrants remains to be formulated. The Federal Government, however, has recognized the importance of the problems of moving people by investigations and reports made subsequent to the Federal transient program. Thus, in 1937, Senate Resolution 298 (74th Cong.) resolved:

That the Secretary of Labor is hereby authorized and directed to study, survey, and investigate the social and economic needs of laborers migrating across State lines, obtaining all facts possible in relation thereto which would not only be of public interest but which would aid the Congress and the States in enacting remedial legislation. The Secretary of Labor shall report to the Senate, with recommendations for legislation.

[28] Los Angeles Times, February 7, 1936, cited in Janow and Beecroft, op. cit., p. 483, footnote 15. Near the end of the Federal transient program in December 1935, the Federal Government made a "final transient grant" of $500,000 to California. On July 1, 1936, unexpended balances available for transient aid amounted to $275,000. The State relief administration survey in 1936 commented: "That persons should have been allowed to starve or forced to exist in the way this survey has shown to be the case while there was this much money available in the hands of the State relief administration is hard to understand" (Transients in California, op. cit., p. 37.)

[29] Hon. C. L. Olson, San Francisco Hearings of Select Committee, p. 2237.

[30] Ibid.

[31] Ibid.

In conformity with this resolution and with the help of various private and public agencies[32] the Secretary of Labor tendered a report to the Senate (75th Cong.) under date of July 3, 1937.[33]

In 1939 and 1940 a subcommittee of the Senate Committee on Education and Labor made an exhaustive examination of the problems of agricultural migratory labor in California and in the Nation as a whole in investigating violations of civil liberties.[34]

In June of 1940 the Interdepartmental Committee to Coordinate Health and Welfare Activities presented a report on Migratory Labor to the President of the United States.

The House of Representatives passed a resolution on April 22, 1940 (H. Res. 63, 76th Cong.) providing—

> That the Speaker appoint a select committee of five Members of the House, and that such committee be instructed to inquire into the interstate migration of destitute citizens, to study, survey, and investigate the social and economic needs, and the movement of indigent persons across State lines, obtaining all facts possible in relation thereto which would not only be of public interest but which would aid the House in enacting remedial legislation, and shall have the right to report at any time.

The Select Committee held hearings in key cities throughout the Nation and presented its report to Congress April 3, 1941.[35] By further resolution Congress extended the work of the Select Committee and broadened its mandate to include the investigation of migration arising in connection with the national-defense program.[36]

THE NONRESIDENT IS GENERALLY EXCLUDED FROM PUBLIC AID

In 1935 the policy of Federal aid for relief was replaced by the social security and works programs. The abandonment of the transient program and the return of general relief to the States left the nonresident in his former disadvantaged position.[37] Old-age and other assistance rendered through the Social Security Board permitted the States to maintain or erect lengthy residence requirements.[38]

The Federal Work Projects Administration laid down the policy that equal opportunity in project employment be given to residents and nonresidents; however, the certifying procedures were handled through the State welfare agencies, which excluded persons lacking settlement in the State or political subdivision.[39] Similar discrimination against nonresidents was manifest in other programs involving the expenditure of Federal moneys.[40]

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[32] These included the Resettlement Administration, the Social Security Board, the U. S. Department of Labor, the U. S. Public Health Service, the Works Progress Administration, the Continuing Committee of the Interstate Conference on Transients and Settlement Laws, the Council of State Governments, the Social Science Research Council, and the National Committee on Care of Transient and Homeless (see California State Relief Administration, Transients in California, op. cit., p. 289).

[33] No funds were appropriated for the investigation, and the report was not printed. Excerpts are printed in the Washington Hearings of Select Committee, part 10, p. 4085 ff.

[34] Violations of Free Speech and Rights of Labor, hearings before a Subcommittee of the Committee on Education and Labor, U. S. Senate, pursuant to S. Res. 266, 74th Cong., vols. 46-77; supplementary hearing, vols. 1-3.

[35] H. Rept. 369.

[36] H. Res. 113, 77th Cong. The committee is now known as the Select Committee Investigating National Defense Migration.

[37] Interstate Migration, Report of Select Committee, pp. 601 ff.; Ryan, Migration and Social Welfare, op. cit., pp. 54-55; Janow and Beecroft, op. cit., p. 478; California Relief Administration, Review of Activities, 1932-35, op. cit., pp. 199-200.

[38] Testimony of Miss Phyllis Osborn, regional representative of the Bureau of Public Assistance, Social Security Board, Kansas City, Mo., Oklahoma City Hearings of Select Committee, p. 2175.

[39] Fred R. Rauch, Acting Commissioner, Federal Works Agency, Work Projects Administration, The Relationship of the Work Projects Administration to Migrant Families Seeking Work, Washington Hearings of Select Committee, pt. 9, pp. 3641 ff.

[40] See The Nonresident and Federal Aid, Washington Hearing of Select Committee on National Defense Migration, July 21, 1941.

Every year the Federal Government disburses billions of dollars to the States for various types of aid, including grants for road building, for certain educational purposes, for public health work, for aid to aged, blind, and dependent persons, for the administration of unemployment compensation and employment service. The Federal Government also makes payments directly to individuals in the form of surplus commodities, wages on Work Projects Administration, National Youth Administration, and Civilian Conservation Corps projects, benefit payments for crop reduction and soil conservation, assistance to needy farm families, etc.[41] From July 1, 1933, until June 30, 1939, selected Federal expenditures (not including loans) in the State of California totaled about 1½ billion dollars.[42]

For the fiscal year 1939 alone California participated in these moneys in the amount of $192,000,000; 28 million Federal dollars were devoted in 1939 to the "assistance, employment, security, health, and welfare" of California citizens, 128 millions for general relief and work programs, 21 millions for agricultural aid, and 15 millions for "all other" types of aid.[43]

Notwithstanding the facts that nonresidents are citizens of the United States, and that these moneys are drawn from the wealth and income of the whole Nation, nonresidents are denied the privileges of State citizenship by States receiving bounty from the Federal Government.

Public assistance provided by State and local funds is equally withheld from the nonresident.[44] Since 1931, California has required that county aid to indigents be limited to those lawfully resident in the State for 3 years and in the particular county for 1 year.[45] The Unemployment Relief Act of 1940 provides that persons entering the State after June 1, 1940, are not eligible for relief benefits under the State relief administration until 5 years of continuous residence have been completed; those entering the State prior to that date must have 3 years of residence.[46] The only relief available to needy new-

[41] Fiscal Capacity of the States: A Source Book, U. S. Federal Security Agency, Social Security Board Bureau of Research and Statistics, Memorandum No. 43, 3d ed., revised 1940. See also D. S. Gerig, Jr., The Financial Participation of the Federal Government in State Welfare Programs, Social Security Bulletin, January 1940, vol. 3, No. 1, pp. 21–33.

[42] Consolidated State Reports of Selected Federal Expenditures July 1, 1933–June 30, 1939, compiled by Office of Government Reports, Statistical Section, October 1940, Rept. No. 9—1933-39, p. 2.

[43] Fiscal Capacity of the States: A Source Book, p. 32, table 6.

[44] See brief of amicus curiae, p. 12.

[45] A California statute of 1901 (ch. 239) providing "for the maintenance and support in certain cases of indigent, incompetent and incapacitated persons" required recipients of such aid to be continuously resident in the State for at least 1 year. In 1931 this law was amended (ch. 110) to require 3 years' residence in the State. In 1933 the indigent law of 1901 was repealed, and a substitute law was passed (ch. 761), providing among other residence requirements that a person to receive aid must have lived 3 years continuously in the State and 1 year in the county (see California State Emergency Relief Administration, Transients in California, op. cit., pp. 37 ff).

It might be noted that the State relief administration was not bound by the residence restrictions outlined above. It was contemplated in the statutory definition of eligibility for aid, that migratory workers and nonresidents be provided with unemployment relief by the State relief commission (Senate bill 940, ch. 675). Prior to 1940 a residence requirement of 1 year was set by commission rule (Summary of Social Security Welfare, and Relief Programs, California, submitted by Harrison S. Robinson, chairman of State-wide committee on the migrant problem, California State Chamber of Commerce, San Francisco Hearings of Select Committee, p. 2484). However, the State emergency relief administration noted in 1936 (Transients in California, op. cit., p. 287): "The relief administration has in large part, chosen not to expend its funds for relief of nonresident migratory workers." A report on the transient program of State relief administration in Los Angeles County, February 1939, states: "Since September 1935 there has been a gradual restriction of care to transients until we find, in February 1939, a program simply of emergency care pending verification of residence, authorization for return, and transportation (James B. Reese, Los Angeles Hearings of Select Committee, p. 2889).

[46] "In May 1940, the legislature adopted a statute providing that persons entering California after June 1, 1940, must have 5 years' continuous residence to be eligible, and that those who had entered the State prior to that date must have 3 years' residence, with the exception that anyone who had been certified as eligible for relief prior to February 18, 1940, is exempt from these residence provisions, and the further exception that temporary care can be furnished nonresidents for a period of 30 days pending verification of their legal residence and transportation thereto" (Robinson, San Francisco Hearings of Select Committee, p. 2484).

comers are the meager hand-outs of the private charitable agencies or the limited assistance rendered through the Federal Government.[47]

Undoubtedly the problems of aid to such persons are partly grounded in the uneven incidence of their influx into certain localities.[48] County budgets in these and other localities for certain types of welfare aid have increased in recent years. Over-all generalizations are not permissible, however, with respect to migration and the trend of public expenditures in California. According to a representative of the United States Department of Agriculture:

* * * our studies reveal no direct relationship between distressed migration to California and public costs in general.[49]

Population growth and the steady extension of public services account for most of the increases. Thus it was found that—

From 1930 to 1939 total disbursements for all counties in the State rose 27 percent during the same period that population was increasing 18 percent, resulting in a per capita increase of only 7 percent (from $63.31 per person in 1930 to $67.85 per person in 1939).

It is interesting to compare these changes with those of the preceding decade, the twenties, during which period population increased by 65 percent and county disbursements by 198 percent, or a per capita increase of 80 percent (from $35.20 per capita in 1920 to $63.31 per capita in 1930). Nothing approaching such a rise in either population or public expenditures has taken place during the last decade.[50]

This finding accorded with a specific analysis of public expenditures in Yuba County, Calif., the jurisdiction in which the instant case originated.[51] Total county expenditures varied widely; increases in most items were relatively small (the exceptions were education and charities and corrections). Increasing proportions of county disbursements were derived from State and Federal subventions. Since 1936 Federal contributions have constituted about 10 percent of total county funds. Regarding the relation between increases in county public expenditures and migration during the past decade, two analysts from the United States Department of Agriculture state:

* * * Nor can it be said that such increases as have been made during the decade are not solely the result of a general tendency to increase public services. Under normal conditions a 50-percent increase in population (such as occurred in Yuba County during the decade) should have resulted in much greater increases in expenditures. A 65-percent increase in California's population in the decade 1920-30 was accompanied by a 198-percent increase of all county disbursements, or a per capita increase of 80 percent. Yuba County's expenditures show no such relationship.[52]

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[47] "Mr. CURTIS: Governor, who takes care of the people who arrive here who cannot qualify for relief under State laws if they are hungry?

"Governor OLSON. I might say no one, except for such little aid as is given through our division of immigration and housing to try to get them placed through the Farm Security Administration, with its limited funds, and through local voluntary charities.

"It is entirely inadequate, of course. They are unable to draw the money appropriated by the legislature for unemployment relief under existing law" (Hon. C. L. Olson, San Francisco Hearings of Select Committee, p. 2249).

Data cited in appellee's brief show that more than three-fifths of the family heads on State relief rolls in Yuba County during February 1939, had been in the State more than 5 years (Appellee's brief, dated April 28, 1941, p. 16).

[48] Janow, San Francisco Hearings of Select Committee, pp. 2291–2292; Harrison R. Robinson, Summary of the Report and Recommendations, Statewide Committee on the Migrant Problem, California State Chamber of Commerce, San Francisco Hearings of Select Committee, p. 2474.

[49] Frederick Arpke, Recent Distressed Migration to California and the Trend of Public Expenditures, San Francisco Hearings of Select Committee, p. 2425.

[50] Frederick Arpke, Recent Distressed Migration to California and the Trend of Public Expenditures, San Francisco Hearings of Select Committee, p. 2423.

[51] Frederick Arpke and H. J. Voth, The Relationship between Changes in Public Expenditures in Yuba County, California, and Recent Migration into the County (files of Select Committee).

[52] Frederick Arpke and H. J. Voth, The Relationship between Changes in Public Expenditures in Yuba County, California, and Recent Migration into the County (files of Select Committee).

The National-Defense Program Calls for the Free Mobility of the Able-Bodied Population

The unfettered right to migrate in search of economic livelihood needs no stronger justification than the requirements of the national defense program. Investigations of the Select Committee on National Defense Migration show that millions of Americans are on the move to fill the defense demand for workers in factory and field, mine and office.[53]

The four chief centers of defense activity in California have drawn almost 170,000 migrant workers since August 1940. Half of these have come from outside the State. Almost 100,000 of them have been placed in industrial defense jobs.[54] California employers are actively engaged in recruiting workers with special types of skills and work habits from various parts of the Nation.[55]

Many of the migrants are pursuing highly skilled migratory occupations (e. g., construction) from one defense center to another. Great numbers are disadvantaged people who were unemployed or underemployed during the depression and who are again responding to the call of economic opportunity. The core of destitution hardened in the 1930's is slowly dissolving. Distress migration is transforming into job migration.[56]

Defense-job opportunities are concentrated in the urban-industrial States. These States are not sufficient unto themselves. Labor shortages appear in specific industries, and labor needs are fulfilled from every part of the Nation.[57] Those workers with strategic occupational skills are being sought the length and breadth of the land. Others are being trained for the necessary skills in centers distant from their homes.[58] For purposes of training and job placement to meet defense demand, the Nation's workers comprise one single national labor pool.[59]

The President of the United States has called for the participation of all citizens and all groups in the national defense effort.[60] The Federal Government has undertaken "to see that each and every person in the Nation is employed at his or her maximum usefulness in the defense effort." [61]

All workers have not yet found jobs, and all destitution has been by no means banished. The least that is owing to those whose incomes and jobs have been removed through no fault of their own is the opportunity to reclaim their useful and productive place in society.

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[53] The Federal Security Agency estimates that half a million workers will have to be imported to 116 defense centers within a twelve-month period (Washington Hearings of Select Committee, pt. 17, p. 6743). U. S. Public Health Service estimates that there will be an influx of almost 2,500,000 civilians to certain military and industrial defense areas (Washington Hearings of Select Committee, pt. 17, p. 6680).

[54] Report of California Department of Employment, Washington Hearings of Select Committee, pt. 17 p. 6744.

[55] Ibid., p. 6750, testimony of Richard M. Neustadt, regional defense coordinator, Federal Security Agency, San Francisco, Calif., San Diego Hearings of Select Committee, p. 4950.

"The Chairman. In other words, where a year ago several States were trying to keep migrant workers out, now you are trying to get them in.

Mr. Neustadt. Yes. It is either a feast or a famine, and right now it is a famine in some instances * * *." (Ibid. p. 4957.)

[56] See testimony and exhibits of Arthur J. Altmeyer, Chairman, Social Security Board, Federal Security Agency, Washington Hearings of Select Committee, pt. 17, pp. 6724 ff.

[57] "Workers are being selected from every known source and from all sections of the Nation to relieve the shortages that have developed" (report of Kentucky Unemployment Compensation Commission, Washington Hearings of Select Committee, pt. 17, p. 6769).

[58] Testimony of Sidney Hillman, Associate Director General, Office of Production Management, Washington Hearings of Select Committee, pt. 16, pp. 6343 ff.

[59] "The Employment Service is no longer recruiting men from a particular city or State. Each employment office is a recruiting center for the entire United States. Each employment office is a link in a national effort." (Altmeyer, Washington Hearings of Select Committee, pt. 17, p. 6728.)

[60] Executive Order No. 8802 of June 25, 1941.

[61] Altmeyer, Washington Hearings of Select Committee, pt. 17, p. 6728.

Conclusion

In our complex society, widespread unemployment and destitution are more than a charge upon the local community; the forces bringing them about are national and even international in scope. Are the victims of these impersonal economic forces to be labeled with the pauper's badge and deprived of the rights, privileges, and immunities of citizenship?

When 20,000,000 persons at one time are forced to seek public relief, to identify poverty with crime is to convict a nation. When a million persons, separated from their homes and jobs, half of whom are destitute or nearly so, migrate to California in the hope of bettering their lot, the attempt to bar them by statute is as fruitless as King Canute's exhortation to the ocean waves.

How tragic and how absurd would be the actual enforcement of the antimigratory statute against half a million migrants. How tragic and absurd, indeed, was the result when, in defiance of the Constitution of the United States and of the declared opinion of the State attorney general, police officers were stationed at the points of California border entry in a vain attempt to press back the irresistible tide.

A law which makes it a crime to bring persons into a State who are "indigent" (or likely to become a public charge) is necessarily prospective in its reference. Who can say in advance whether this person will succeed in finding employment and that one fail? Whether this person will subsist at the expense of the public and that one on the bounty of relatives?

If every State in the Union could prejudge the economic fate of these people and turn them away at its borders, where would they go? Where would the Duncans of America go?

APPENDICES

A. Charts showing residence requirements for settlement in the various States 1931–40

B. Copy of opinion of U. S. Webb, former attorney general of California, on the legality of border patrol

C. Copies of articles from the files of the Los Angeles Herald-Express relating to the border patrols at the California State line during 1935–37

D. Copies of Assembly bills (California) No. 2459 and 1356

E. Copies of articles from the files of the Florida Times-Union and New York Times relating to the border patrols at the Florida State line 1934–37

F. Copy of executive order of Governor Edwin C. Johnson, Colorado, dated April 20, 1936

G. Copies of articles from the files of the Denver Rocky Mountain News relating to the border patrols at the Colorado State line 1936

H. Opinion of Stephens, District Judge, in the matter of *John Langan* v. *James E. Davis*, as chief of police of the city of Los Angeles, March 17, 1936

I. Opinion of Burr, Judge, in the matter of *Adams County* v. *Burleigh County*, Supreme Court of North Dakota, 1940

J. Excerpt on California Border Patrol from California State Relief Administration, Transients in California, San Francisco, 1936, pp. 243–266

K. Compilation of all State antimigratory legislation, including exclusion laws and removal statutes

APPENDIX A

CHARTS SHOWING RESIDENCE REQUIREMENTS FOR SETTLEMENT IN THE VARIOUS STATES, 1931–40

Residence requirements for acquisition of settlement in the various States, 1931

[No settlement laws are applicable to the District of Columbia]

2 months	3 months	6 months	No settlement laws, 1-year rule practiced or voting laws "assumed"	1 year	3 years	4 years	5 years	7 years	10 years	Not specified
Montana.	Wyoming.	Alabama. Idaho. Kansas.	Arizona. Arkansas. Colorado. Delaware. Florida. Kentucky. Louisiana. Maryland. Mississippi. Nebraska. Nevada. Oklahoma. Oregon. Washington.	California. Illinois. Indiana. Iowa. Michigan. Minnesota. Missouri. New York. North Carolina. Ohio. Pennsylvania. South Dakota. Utah. Virginia.[1] West Virginia.[1] Wisconsin.	South Carolina. Vermont.	Connecticut.	Maine. Massachusetts. New Jersey.	New Hampshire.	Rhode Island.	Georgia. New Mexico. Tennessee. Texas.

[1] A person migrating into the State could not obtain a settlement until he had resided there for 3 years, unless he was able to maintain himself at the time of migration.

Source: This table based on a Compilation of Settlement Laws of All States in the United States by Harry M. Hirsch, State department of social welfare, Albany, N. Y., 1931.

Residence requirements for acquisition of settlement in the various States, 1940

6 months	1 year period practiced, assumed, accepted, or fixed by welfare department	1 year	2 years	3 years	4 years	5 years	Not specified
Alabama. Mississippi.	Florida. Kentucky. Louisiana. New Mexico. Texas. District of Columbia. Tennessee. Washington.	Georgia. Iowa. Michigan. Missouri. Montana. Nebraska. New York.[4] North Carolina.[1] North Dakota. Ohio. Oklahoma. South Dakota. Utah. Virginia.[5] West Virginia. Wisconsin. Wyoming.	Delaware. Minnesota. Pennsylvania.	Arizona. Colorado. Idaho. Illinois.[2] Indiana. Nevada. Oregon. South Carolina. Vermont.	Connecticut.	California.[3] Kansas. Maine. Massachusetts. New Hampshire. New Jersey.[1] Rhode Island.	Arkansas. Maryland.

[1] 3 years required if residence began on or before June 1, 1940.
[2] Not retroactive and does not affect those already on relief on June 29, 1939.
[3] 1 year without interruption if immediately preceding May 4, 1936.
[4] 5 years required in certain counties.
[5] 3 years required if person was not self-supporting at time of entering State.

NOTE.—All States have additional restrictions which effect settlement.
Source: This table adapted from a Compilation of Settlement Laws, American Public Welfare Association, Chicago, 1939.

APPENDIX B

(Copy of opinion by U. S. Webb, former attorney general of California, on the legality of border patrol)

SAN FRANCISCO, *February 18, 1936.*

Hon. ARTHUR G. ARNOLL,
Secretary and General Manager, Los Angeles Chamber of Commerce,
Los Angeles, Calif.

MY DEAR MR. ARNOLL: I have considered with care your recent letter, in which you refer to and in a measure describe the plan, having the approval of the Los Angeles Chamber of Commerce, and which "has been worked out by the police department of the city of Los Angeles," having for its object the prevention, insofar as possible, of the coming to this State of indigent persons who will become a charge upon the State, and will to some degree, as you say, increase the probability of crime. Insofar as this object may be lawfully accomplished, it is worthy of unqualified approval, but organized government, neither State, county, nor municipal, should attempt the achievement of a laudable purpose by unlawful means.

The constitution of this State authorizes the creation of local governments, county and municipal, and those governments and their officers function within their respective territorial limits. The operation of one municipal government within the territorial limits of another is not countenanced or authorized. The operation of the government of one county within the territorial limits of another is not countenanced or authorized, nor can the efforts of one of such governments to discharge the duties which belong to another be defended.

The police of the city of Los Angeles have no jurisdiction beyond the city's territorial limits, and the police department of the city of Los Angeles is not authorized to interfere with or discharge the duties devolving upon police authorities of another government, municipal or county.

The independence of these several governments, each of the other, has long been recognized, and the instances where one of such has sought to invade the territorial limits of another have been fortunately of infrequent occurrence.

If the invasion by one of such governments of the domain of another and the effort there to discharge the duties of the local officers of such other government were permitted, it can readily be apprehended that the evils which might result in given instances would far outweigh any good that might be accomplished in other instances.

May I at this point quote a paragraph of your letter:

"The plan which has the approval of this chamber of commerce has been worked out by the police department of the city of Los Angeles, in cooperation with the sheriffs, not only of Los Angeles County, but of all border counties of the State; and this plan provides for the deputizing of officers of the Los Angeles Police Department in connection with border counties of the State by the sheriffs of such counties, with the consent of the boards of supervisors of these counties."

Passing the question of the incompatible character of the duties of a member of the police force of the city of Los Angeles and a sheriff of one of the counties of this State, we come at once to the question of the eligibility of a police officer of the city of Los Angeles to act as a deputy sheriff of any county in the State other than the county of Los Angeles.

Under provisions of the political code of this State no person is eligible to the position of a deputy sheriff in one of the counties of this State, except he be an elector of such county. Obviously the members of the police department of the city of Los Angeles are not electors of any county in the State save the county of Los Angeles.

The police officers of the city of Los Angeles not being eligible for appointment as deputy sheriffs in other counties, the sheriffs of such other counties may not legally so appoint them, with or without "the consent of the boards of supervisors of these counties."

No question is here made as to the powers that may be exerted within the municipality of Los Angeles by its police department, and no question is made as to what may be done elsewhere in aid of or in cooperation with the local officers of other municipalities or other counties of the State, so long as the law is not thereby violated.

Government, State, county, and municipal, should protect and preserve and defend general welfare, but this ultimate object should be accomplished through lawful methods. Government no more than the individual can justify the reaching of even proper ends through unlawful means.

Whatever may be lawfully done by the officers of one government in aid and support of the officers of another, in law enforcement and the preservation of general welfare may be approved.

The apprehension of any and every person falling within the scope of section 647 of the Penal Code by the local officers of the local government in which such persons are found, may be lawfully accomplished. If by arrangement between officers of the different governments such action can be aided, encouraged, and supported, such arrangements as do not violate the law are of course entirely justified and defensible, but beyond that which is lawful neither government nor its officers should go.

On November 24, 1931, at the instance of a committee of Los Angeles officials and citizens, a meeting was called by the Governor of this State to consider identically these same questions, and as a result of that meeting the officers of all border counties were communicated with, urged to the greatest activity, within lawful limits, in an effort to check the immigration to this State of those who would here become a public charge. One or more employment camps, as result of that determination, were established, and for some months maintained, and the evil was for a long period greatly checked, but the effort was not continued through the years, and I understand largely because of the cost which resulted, and perhaps in some degree as result of the false security felt because temporarily this invasion had been checked. That effort was entirely within the law, and in my judgment should have been continued, for the good accomplished greatly outweighed the cost of the effort. I sat in that meeting and this office advised much that was then and thereafter done.

I note your statement "that an official of your office in Los Angeles has raised the question as to the legality or constitutionality of this procedure."

You are there referring to the procedure as your letter outlines it.

This office has advised, as I have indicated in this letter, that members of the police department of the city of Los Angeles may not legally be appointed deputy sheriffs in other counties of this State. Further than that I think no member of this office force has gone.

For a long period this office has keenly appreciated the existence of the evils which your letter describes, and during all of that time has aided every proper effort to check this invasion, and our attitude in this regard has in no manner changed.

I note your closing paragraph, in which you state:

"I trust that we may have your cooperation in connection with this burden upon the taxpayers of the State," etc.

In reply to this suggestion, I state again, we have during the years that have passed given the cooperation of this office to every lawful effort to relieve the State and its people of this unjust burden, and such efforts will continue so long as the evil exists.

The plan which your letter describes presents still other and different questions. The outstanding question so presented is: How far may one State go in preventing the entry into such State of citizens of the United States resident of other States?

As between the States, the right of citizens to ingress and egress has very generally been recognized and upheld. Full recognition of this right was given and guaranteed to the residents of the colonies by the Articles of Confederation. Those rights were carried and continued by section 2 of article IV of the Constitution in the declaration that—

"The citizens of each State shall be entitled to all privileges and immunities of Citizens in the several States."

Almost 100 years ago Chief Justice Taney said:

"We are all citizens of the United States, and as members of the same community must have the right to pass and repass through every part of it without interruption, as freely as in our own States."

This language was quoted approvingly by Chief Justice Miller in *Crandall* v. *State of Nevada* (73 U. S. 49), and we find no conflicting utterances in any subsequent decision of the Supreme Court of the United States.

In *Paul* v. *Virginia* (75 U. S. 180), Justice Field said:

"It was undoubtedly the object of the clause in question to place citizens of each State upon the same footing with citizens of other States, so far as the advantages resulting from citizenship in those States are concerned. It relieves them from the disabilities of alienage in other States; it inhibits discriminating legislation against them by other States; it gives them the right of free ingress into other States, and egress from them; it insures to them in other States the same freedom possessed by the citizens of those States in the acquisition and enjoyment of property and in the pursuit of happiness."

Some exceptions, however, have been repeatedly indicated. A State may undoubtedly protect itself from the incoming of persons afflicted with contagious diseases, of fugitives from justice, of persons convicted of crime, and of persons whom the State may deem dangerous to its peace or who would, upon their entry into the State, be subject to arrest and imprisonment by virtue of some existing statute of the State.

This power to prohibit, however, the entry of such persons rests in the government and is to be exercised through the legislative branch of the government. It is for the legislature to determine the classes who may be so prohibited. The power to so determine and to exclude without legislative action does not rest in the officers of the State. It is generally recognized that the officers of a government may exercise those powers only which have been by proper authority expressly delegated to them.

Section 647 of the Penal Code, to which we have referred, and other provisions of our statutes may subject persons coming across our borders to arrest immediately upon their entry into this State, but none of these statutes confer upon peace officers the right to forcibly prevent such entry.

I have gone somewhat at length into these matters in order to point out to you some of the difficulties which confront us. So far as we may rightly go in this matter the conditions warrant our going. In so dealing with the question, however, we should always keep in mind the relative rights, obligations, and duties of our sister States and of the citizens of the United States. Other States will not be expected to complain of that which we rightly do, but they may be expected to complain, and their right to complain must be admitted, of those things which we wrongly do.

In this as in other matters we should steadily keep in mind that we are one of the sisterhood of States, and while asserting our own rights we should recognize fully the rights of other States. As other States must do unto California, so must California do unto them, for such is the mandate of the Federal Constitution.

Very truly yours,

U. S. WEBB, *Attorney General.*

APPENDIX C

Following are copies of articles from the files of the Los Angeles Herald-Express relating to the question of border patrols at the California State line during 1935-37:

[Herald-Express, May 17, 1935]

ASSEMBLY BODY BACKS BILL TO BAR INDIGENTS

SACRAMENTO, May 17 (by United Press).—A bill which would make California a "closed corporation" to indigents as a means of relieving the unemployment situation was given a favorable recommendation today by the Assembly committee on unemployment.

Providing for the possible use of armed guards to prevent entrance into California of persons likely to become public charges, the measure represents one of the most drastic proposals yet submitted to the legislature.

Introduced by Assemblymen Kent Redwine, Hollywood, and William Moseley Jones, Montebello, the bill provides that "all paupers, vagabonds, indigent persons and persons likely to become public charges and all persons affected with contagious or infectious disease are hereby prohibited from entering the State of California."

Full powers would be granted the Governor to take whatever steps he thought necessary to enforce the proposed law during an emergency period ending July 1, 1939.

Under provisions of the measure it would be necessary for an individual to prove he was not subject to the restrictions before he would be permitted to enter the State.

Pointing to the steady arrival of persons without employment or resources, the authors said that "if this influx continues social and economic rehabilitation may be impossible."

The effort to isolate California in this respect grows out of the tremendous influx of population which occurred during the gubernatorial campaign of 1934. Thousands of people, attracted by the promises of relief made in the bitter campaign, flocked to California, making its relief problem one of the severest in the Nation.

[Editorial, Herald-Express, May 21, 1935]

Extremely important to the welfare of this State and its citizens is a measure that will come up in the California Legislature for action during the present week.

It is known as the Jones-Redwine bill, and it is intended to keep outside our borders the horde of indigent persons constantly invading this State and becoming public charges on our already heavily overloaded ability to extend charity.

Naturally our people are extremely sympathetic with those who are unable to gain a livelihood, wherever they may be. At the same time, it is a bounden duty for each State to care for its own needy, and everybody knows we have more than our proportionate share of such unfortunates now.

This is one measure that contains no politics. The authors of the bill are as far apart in political thought as the poles—one a conservative Republican and the other a leader of the epic Democrats.

Both these men realize the importance of relieving the citizens of this State from any further load, and hence in their measure they seek to bar entry to paupers, vagabonds, indigents, persons afflicted with contagious and infectious diseases, and those likely to become public charges.

In a ruling by the United States Supreme Court, as cited by Maj. Walter Tuller, it remarked: "It may be admitted that the police power of a State justifies the adoption of precautionary measures against social evils. Under it a State * * * may exclude from its limits convicts, paupers, idiots, and lunatics, and persons likely to become a public charge * * * a right founded * * * in the sacred law of self-defense."

California cannot afford to become known as the "poorhouse of the Nation." It cannot afford it financially, because our extreme resources are now being taxed to support the great number of unemployed and needy citizens we already possess.

Nor can California afford it merely as a matter of reputation nor because of the lowering of standards of living which would inevitably follow such a condition.

Yet such a fate lies ahead of the Golden State unless the legislature acts promptly and decisively to keep out the multitudes of indigent whose eyes may now be turned in this direction.

The bill with a tentative enforcement limit of July 1, 1939, requires all persons seeking to enter California to establish affirmatively their ability to support themselves and makes it the duty of government to establish regulations for enforcing the law.

This proposed act is distinctly emergency legislation, and it should be put through all the necessary stages of passage as quickly as possible.

[Herald Express, August 24, 1935]

Stay Away From California Warning to Transient Hordes

San Francisco, August 24.—Indigent transients heading for California today were warned by H. A. Carleton, director of the Federal Transient Service, "to stay away from California."

Carleton declared they would be sent back to their home States on arrival here due to closing of transient relief shelters and barring of Works Progress Administration work relief in the State to all transients registered after August 1.

"California is carrying approximately 7 percent of the entire national relief load, one of the heaviest of any State in the Union," said Carleton. "A large part of this load was occasioned by thousands of penniless families from other States who have literally overrun California."

Carleton estimated the transient influx at 1,000 a day.

[Herald-Express, December 11, 1935]

Urge Prison Camp Hard Labor for "Boxcar Tourists"

As a means of keeping indigent transients out of Los Angeles, prison camps, at which convicted vagrants would be put to hard labor, might solve much of the city's problem with this type of "tourists," the Los Angeles Chamber of Commerce today declared in a communication to the city council.

The chamber declared that the question of caring for indigent transients is becoming increasingly more difficult and that establishment of the hard labor camps might have the effect of slowing up "this invasion." The council referred the matter to the police commission for recommendation and report.

[Herald-Express, February 4, 1936]

INDIGENTS BARRED AT ARIZONA LINE

While a tumultuous row was raging in city council over Police Chief James E. Davis' "expeditionary force" of policemen to halt the indigents over California's far-flung borders, the lid was successfully clamped on the Arizona-California line today.

The spectacular row in the council broke out when Councilman P. P. Christensen, consistent critic of Davis, introduced a resolution demanding by whose authority the police chief was sending 136 of his "coppers" to the State line "trenches."

At the same time Deputy Chief Homer Cross said the entry ports on the Arizona boundary had been blocked against transients in an effort to halt the "flood of criminals" and divert the stream of penniless transients.

Within 3 more days, Cross estimated, the blockade would be similarly effective on the Oregon and Nevada lines, abutting California territory.

The skirmish began right after Councilman Evan Lewis took the floor to argue in favor of Christensen's resolution.

Meantime from Sacramento to Phoenix, Ariz., the reverberations resounded. At the California capital Deputy Attorney General Jess Hession declared he believed Davis' methods illegal. Governor Frank F. Merriam withheld comment but State Senator Thomas Scollan, who had brought about defeat of an indigent-barring law at the last session of the legislature, characterized the "expeditionary forces" as "damnable, absurd, and asinine."

At Phoenix, Attorney General John L. Sullivan caustically declared if California tried to "dump" indigents back on his State, he would take swift action in reprisal.

In Los Angeles, Councilman Earl C. Gay, also took the floor and hotly opposed Lewis and Christensen. "As usual," Mr. Gay said, "Mr. Lewis is talking about something he knows nothing about." His face flushed and making no effort to hide his indignation, Councilman Lewis leaped to his feet. His first remarks were drowned by the gavel of Council President Robert L. Burns, who tried to leave the floor to Gay. Lewis remained on his feet and continued to shout as Burns loudly pounded for order. Half a dozen other councilmen tried to gain the floor. Gay then resumed his argument, insisting that the action of the police chief probably was dictated by the police commission.

ASKS LEGAL OPINION

The Christensen resolution was amended and sent to the city attorney's office requesting that official's legal opinion on the following points:

1. Legality of the action taken by the police commission in sending the "expeditionary force" to the border.
2. Jurisdiction of the council over the matter.
3. Has the city the legal right to expend city funds for salaries and expense accounts of police officers assigned to police duties outside the city boundaries?
4. Are the pension rights of police officers assigned to such duties valid in event any such officers are killed or injured on duty?
5. Has the police commission legal authority to detail policemen to police duty on the various State border lines, as contemplated in their recent assignments?

ORDERS OUTLINED

"Tactical orders" under which the city police were seeking to dam the tide of trouble at the border were outlined by S. L. Harman, assistant secretary of the Los Angeles Chamber of Commerce. He said police and civic authorities were seeking to stop at the State line persons riding trains without paying fares; give these persons the option of leaving the State or serving jail terms; and finally, to discourage from entering California all auto parties without apparent sources of support.

In the sieve of the widespread border patrol, the officers, by fingerprinting methods, expected to catch or at least keep out of California a considerable number of wanted criminals, Harman said.

[Los Angeles Herald-Express, February 5, 1936]

RULE GUARD AT BORDER LEGAL

Flaying critics of Los Angeles' swift war on jobless, penniless winter nomads, Mayor Frank L. Shaw today revealed a legal opinion by City Attorney Ray L. Chesebro stating that the police reinforcements of the border patrol were authorized by the city's charter.

Meantime, against hesitant cooperation and even outspoken opposition from Arizona, Nevada, and Oregon, Police Chief James E. Davis' flying squadrons of 136 city police officers succeeded in turning back hundreds of indigents and has caused at one border port, Blythe, a 50-percent drop in incoming hordes.

NO DUMPING GROUND

Mayor Shaw declared Los Angeles would not be the dumping ground of charity-seekers, fleeing from the more rigorous winters in practically every other State in the Union. He declared that on January 31, when the police commission showed him the gravity of the winter indigent problem with its trail of crime and added relief burdens, he asked City Attorney Chesebro for the legal opinion and received authority for Davis to set up the police "foreign legion."

"It is important to note," Mayor Shaw said, "that Los Angeles is facing a desperate situation if we permit every incoming freight train to bring us a new shipment of unemployed, penniless vagrants, to consume the relief so seriously needed by our needy people and to create a crime menace almost beyond conceivable control.

"Officials of cities and States en route will not permit these transients to leave the trains, preferring for their own safety that the problem should be dumped in Los Angeles.

"Our own recourse is to reinforce the sheriffs of the border counties with men loaned from the Los Angeles Police Department who can turn back the front ranks of these oncoming hordes promptly and in such numbers that the invasion can be halted at its sources as soon as the news reaches the east.

"We are simply trying to apply an ounce of sensible prevention to save a pound of costly cure later on. Critics of the plan have either not taken pains to examine facts or for mysterious reasons of their own are content to see Los Angeles filled with a homeless indigent army of thousands, recruited from every State in the Union and threatening every security and hope of our own working people.

"It is noteworthy that the critics have no constructive proposals of their own to offer with reference to this very real problem."

SLAP AT FACTION

The mayor's tart remarks were interpreted in city hall circles as a slap at the council faction which yesterday maneuvered a unanimous request from the council to City Attorney Chesebro for an opinion on specific points not covered by the opinion Chesebro gave the mayor.

A possible major development today was the suggestion of Governor Frank F. Merriam at Sacramento for a meeting of western States Governors to seek means of halting the westward tide of jobless.

"There are stations in Arizona," Governor Merriam said, "where chambers of commerce furnish gasoline to itinerants to help them along to California."

Speaking on the much-questioned legality of Los Angeles' far-flung expeditionary force, the Governor said, "I guess Los Angeles can do it; its city boundaries go almost that far."

Governor B. B. Moeur, of Arizona, declared, according to Phoenix dispatches, that Los Angeles was bluffing.

CHARGES "SCARE"

"What the Los Angeles police are trying to do is unconstitutional," he said. "They are simply trying to scare travelers away by threats of fingerprinting. I am investigating."

On the Oregon front, Governor Charles H. Martin said at Salem that the situation was alarming and that he was investigating through his State police force whether California's border could be closed to transients.

At Carson City, Nevada's Governor, Richard Kirman, said he was "not excited" by the transients' ban, but was watching a possible high tide of border

halted indigents, hurled back onto Nevada relief agencies. As the "war" went into its second day, wires hummed with communiques from the local front:

YUMA, ARIZ.: Sgt. D. A. McCoole turned back six transients.

BLYTHE, CALIF.: Sgt. B. B. Eubanks' detail turned back 200 indigents and reported the flow diminished to less than half during second 24 hours; 8 fingerprinted, 6 found with guns.

NEEDLES, CALIF.: Influx slowed down to a single alleged hobo. At nearby Cadiz, Sheriff Emmett Shay investigated set-up to report to San Bernardino County supervisors on advisability cooperating by deputizing Los Angeles "reinforcements."

TRUCKEE, CALIF.: Subzero cold had halted vagrant influx, but Sheriff Carl Tobiason of Nevada County deputized Los Angeles police who showed up in arctic boots and mackinaws.

ALTURAS, CALIF.: Fourteen officers denied commissions by Sheriff John C. Sharp of Modoc County till he hears from attorney general whether it's legal.

Crescent City: Del Norte County's sheriff, Austin Huffman, refused commissions pending inquiry.

Plumas County: Sheriff L. A. Braden cooperating but not deputizing officers from Los Angeles.

Siskiyou County: Sheriff W. G. Chandler deputized 11 officers from Los Angeles; 7 stationed at Hornbrook and 7 at Dorris on great Pacific highway travel artery.

Sergeant D. Douglas, in charge of the "expeditionary force," reported to Davis that his men were halting tramps riding the "blind baggage" of railway trains and hitch-hiking into the State in autos. Of 16 men stopped at one port, Douglas reported 8 were found to have police records.

Sworn in as local deputies in the counties in which they are stationed, the officers of the squadron were taking hoboes off freight cars, tenders, and blind baggage compartments and holding them on two charges, vagrancy and evading railroad fares. Railroads are cooperating with the police, Chief Davis said. He explained the only reason the railroads had not succeeded earlier in halting the westward influx of tramps was lack of special officers. Some freights carry 50 or 60 hoboes, Davis said, and the men on the train crew are helpless to throw them off.

The chief, meantime, defended his plan on the ground that in sending 136 of his men to the State's outposts he has taken a "humane and legal course and the only one that will work."

"For years various plans have been advanced for discouraging these people from coming to California but nothing very efficient ever developed," the chief said. "Now with Government relief being gradually withdrawn, the situation is becoming alarming, if not desperate, to the residents of this community."

"If we wait until these thousands of indigents scatter over the 460 square miles of incorporated Los Angeles, the police department will have little control over them, but if we stop them at the arteries now being guarded, the situation is considerably simplified. If this is done, we confidently expect a 20-percent decrease in the crime total in the next 12 months. Records show that 65 to 85 percent of migratory indigents come to southern California. Fingerprinting of vagrants and street beggars recently showed that approximately 60 percent of these have criminal records. If we remember that to obtain Government work one must have been a resident in the State at least a year, it can readily be seen that the hordes of indigents are not coming to California for work. They are coming to get on relief rolls, to beg, and to steal."

The chief said he expected hoboland's grapevine would promptly pass the word to jungle camps.

"Our work will be all the more effective and easier when the bums learn that California authorities are actively hostile to them," Chief Davis said.

[Los Angeles Herald-Express, February 6, 1936]

REPORT ALL BEGGARS IS PLEA

Along California's hundreds of miles of land frontier and on the home front in this city, Los Angeles police battled today to turn back hordes of jobless, penniless transients, who are said to have been pouring into this sunny clime from the wintry east at the rate of 6,000 to 7,000 a month.

Developments in the police campaign included:

1. Police Chief James E. Davis, after a conference with Sheriff E. W. Biscailuz, called on Los Angeles housewives to report immediately all beggars who come to the doors of the city's residential districts.

2. Governor Frank F. Merriam was requested today by Governor Richard Kirman, of Nevada, to "intervene" and prevent Los Angeles police expeditions on the border throwing indigents back into Nevada. Governor Merriam was expected to ask Kirman to join in asking the Federal Government to take a hand in halting the migrant work-fleeing hordes.

3. Ernest Besig, of San Francisco, director of the American Civil Liberties Union, a radical organization, demanded criminal and civil actions to halt Los Angeles police activities against the annual midwinter transient movement.

4. Sheriff Biscailuz broadcast to all sheriff's substations orders to enforce the State antivagrancy laws in unincorporated territory, with due care on the part of deputies not to hinder any lawful, personal rights.

5. On three State "fronts" sharp declines in the number of "gentlemen of the road" were recorded by vigilant police patrols.

6. Chief Davis was refused permission by A. C. Fleury, chief of the State bureau of plant quarantine, to use State quarantine stations on the highway entering California, as police outposts. Fleury said he could not grant the chief's request until assured the police expeditionary forces were legal.

[Los Angeles Herald-Express, February 12, 1936]

Seek to Balk Los Angeles Police Border Guard

Arizona, which has been gently shooing indigents westward into California for years, rose in wrath yesterday and threatened to call out the State's National Guard troops because Los Angeles, with its police blockade, has started the tide of jobless roamers back toward the East. The threat was caused by the sidetracking in Tucson of a boxcar in which some 50 eastern transients had been started homeward by the police along the border.

TUCSON CHIEF ACTS

Police Chief C. A. Woolard at Tucson acted when his men arrested 22 of the homeless men. He asked Gov. B. B. Moeur to call out troops "to stop California from dumping hoboes in Arizona."

Whether the Tempe physician, who rose to the office of Governor of the neighboring State, would take this militaristic step was a question. But calling out the guard is no new experience for Governor Moeur. The last time he did it was to stop the Government Reclamation Service from constructing the Parker Dam, a part of the Los Angeles aqueduct system. The troops responded nobly, rushing to the river bank and then creating an "Arizona navy" with a couple of scows to patrol the water front. Today the dam is rapidly proceeding toward completion with the Arizona warriors back in their homes and possibly waiting for the new call to arms.

DAVIS IN APPEAL

Police Chief James E. Davis considers California is not "dumping its bums" but merely moving transients back whence they came. Chief Davis pointed to the rapidly dwindling westward trickle of transients and called on all California to purge itself of hoboes.

Chief Davis appealed to police chiefs in other California cities to join him in the drive. The response from some places was immediate. Officials at Santa Ana, for instance, said they had established a rock pile not only for hoboes but for drunk drivers and other offenders.

[Los Angeles Herald-Express, February 19, 1936]

Group Demands Los Angeles Police Be Recalled From California Border

A formal demand that Police Chief James E. Davis' "foreign legion" be withdrawn from California's borders was filed with the police commission today by the American Civil Liberties Union, which asked that the police squads be returned to the city. Clinton J. Taft, California director of the union, said his

organization was prepared to seek a court injunction if necessary to stop the police patrol. At the same time written protests against the "bum blockade" program were filed with the police board by the Hollenbeck Borough Voluntary Board and the Hollywood Open Forum. While the protests were being received, the police commission approved the allocation of an additional $1,000 to the border patrol of 166 policemen, effective today; another $1,000 for February 20, and a third $1,000 effective February 21.

APPENDIX D

ASSEMBLY BILL No. 2459

Introduced by Messrs. Redwine and Jones, May 16, 1935; referred to committee on unemployment

An act to prevent the entry into California of paupers, vagabonds, indigent persons, persons likely to become public charges, providing means for enforcing the same and prescribing penalties for the violation thereof, declaring the urgency thereof, and providing it shall take effect immediately

The people of the State of California do enact as follows:

SECTION 1. Large numbers of paupers, vagabonds, indigent persons and persons likely to become public charges have been, and are, coming into this State, burdening the relief rolls, creating further unemployment in the State, and subjecting our workers to competition with pauper labor. This influx of unemployed and unemployables at the present time seriously threatens the safety and welfare of the people of this State, and, if continued, will destroy the State. In order to protect this State and the people thereof from pauper labor; also to save this State and its people from impossible financial burdens in caring for vast numbers of paupers and indigent persons; also to preserve the public peace, health, and safety; also to preserve the standard of living of the people of this State and to maintain the general welfare and to protect and defend this State, it is imperatively necessary that hereafter no paupers, vagabonds, indigent persons or persons likely to become public charges, shall be allowed to enter or shall enter this State.

SEC. 2. All paupers, vagabonds, indigent persons are hereby prohibited from entering the State of California.

SEC. 3. It is hereby made the duty of the Governor of this State to enforce the provisions and purposes of this act by the means herein provided and by any other means that he may find necessary to enforce the same. He is hereby authorized and directed to use all means that may be necessary to enforce this act. He is also authorized to cooperate with the *United States of America* in all ways looking towards the effectuating of the purposes of this act.

SEC. 4. Every person whose right to enter the State of California is in question must affirmatively establish that he is not one of the persons excluded from entry under the terms of this act; the burden of proof shall be upon each such person.

SEC. 5. The Governor is hereby authorized and directed to use, in his discretion, any present agency, officers or officials of the State, and, if he deems it necessary or expedient, to create such new agency or agencies and employ such personnel as may be necessary to adequately enforce this act. He may also use the officers and officials of any county, city and county, city, or other municipal corporation in the enforcement of this act.

SEC. 5½. *The Governor is authorized and directed to in every practicable way carry into effect all of the provisions of this act and to that end may set up and maintain at State lines on major or other highways, under the jurisdiction of any department of the State designated by him, either temporary or permanent offices, stations, or bureaus, for the identification of persons and the inspection of motor vehicle or vehicles and to supervise and direct the use of the highway or highways by the person or persons, vehicle or vehicles, entering the State.*

SEC. 6. It shall be the duty of the Governor, either personally or through such official as he may designate for that purpose, to make and enforce all rules and regulations that may be necessary to carry out and enforce the purposes of this act. All such rules and regulations shall be filed in the office of the Secretary of State and shall be effective from the date of such filing. The Governor may likewise alter such rules and regulations from time to time. Any person who shall violate any of the provisions of this act or any of the rules and regulations so promulgated shall be guilty of a misdemeanor and upon conviction thereof

shall be subject to a fine not exceeding five hundred dollars ($500) or imprisonment in the county jail not exceeding one (1) year, or both such fine and imprisonment; in addition any person so convicted who fails to establish that he was a bona fide resident of the State of California at the date of the approval of this act shall be summarily deported from the State of California.

SEC. 7. If any section, subsection, clause or phrase of this act is for any reason held to be unconstitutional, such decisions shall not affect the validity of the remaining portions of this act. The Legislature hereby declares that it would have passed this act irrespective of the fact that any one or more sections, subsections, sentences or clauses or phrases thereof be declared unconstitutional.

If in any action, suit or proceeding it be adjudged that any provision of this act is unconstitutional as applied to the particular facts involved in such action, suit or proceeding, any judgment or decision rendered therein shall not affect the application of the provisions of this act in any other action, case, suit or proceeding.

SEC. 8. This act is passed to meet the emergency herein recited and shall remain in force only until February 1, 1937.

SEC. 9. Should any person enter the State of California in violation of the terms of this act, then upon the discovery of such person at any place in this State he shall be summarily deported from this State.

SEC. 10. This act is hereby declared to be an urgency measure within the meaning of section 1 of Article IV of the Constitution and necessary for the immediate preservation of the public peace, health, and safety and shall take effect immediately.

The facts constituting such necessity are as follows:

There exists in the State of California, in the United States and throughout the world a grave economic depression. Many persons have long wanted to live in California and now finding themselves without employment and without means of support in their fixed place of residence they have been and are moving to California in large numbers. There are hundreds of thousands of employable persons now within this State, most of whom are California citizens and who have no employment and who, together, with their families, are now being maintained at public expense. In addition, today there are also hundreds of thousands of unemployed persons in this State who are not maintained by the public, but for whom no employment is available. There are also tens of thousands of unemployable persons in this State who are now being maintained at public expense.

Vast numbers of paupers, vagabonds, indigent persons and persons likely to become public charges have been and are coming into this State, burdening the relief rolls, creating further unemployment in the State, subjecting our workers to competition with pauper labor, and threatening the continued prosperity, health, safety and welfare of the people of this State. The entry into this State of unemployed persons who do not have *sufficient means to support themselves* results in large numbers of such persons being maintained at the expense of this State, or in the cases in which such persons obtain employment they displace workers already employed in California and the displaced workers and their families are forced upon public relief. If the influx of destitute unemployed continues it will be impossible to provide the sums necessary for relief or to provide employment for the increased numbers of jobless persons. The coming of large numbers of persons of the classes mentioned threatens the peace and safety of the State and it is imperative that no more paupers, vagabonds, indigent persons or persons likely to become public charges, shall enter or be permitted to enter this State.

(Amended in assembly March 31, 1939)

ASSEMBLY BILL NO. 1356

Introduced by Mr. Houser, January 23, 1939; referred to Committee on Social Service and Welfare

An act to prevent the entry into the State of California of paupers, vagabonds, and fugitives from justice, providing for enforcement of this act and prescribing penalties for the violation thereof

The people of the State of California do enact as follows:

SECTION 1. Large numbers of paupers, vagabonds, and fugitives from justice have, and unless restrained will continue to, come into this State, and have created a problem of relief and law enforcement. This influx of such persons is detrimental to the best interests of this State and this statute is enacted in the exercise

of the police power of this State as a matter of self-preservation, and to prevent the overburdening of facilities of the State for the relief of destitution and for law enforcement.

The Legislature hereby declares that the enactment and enforcement of this act is essential to the welfare of the people of this State.

SEC. 2. All paupers, vagabonds, and fugitives from justice are hereby prohibited from entering the State of California.

For the purposes of this act a pauper is a person who is likely to become a public charge within three years.

SEC. 3. The Governor of this State shall enforce the provisions of this act in the manner provided in this act or by any other means or methods available. In carrying out the provisions of this act the Governor is authorized to cooperate with any agency of the United States of America or of any other State of the United States.

SEC. 4. The Governor is hereby authorized to use, in his discretion, any department, board, commission, officer, or other agency of the State to enforce this act; and he may create any additional agency which, in his discretion, he finds necessary to carry out the provisions and to effectuate the purposes of this act.

SEC. 5. The Governor shall make and enforce all rules and regulations necessary to enforce this act. Such rules and regulations shall be filed with the Secretary of State and shall be effective from and after date of such filing.

SEC. 6. The Governor shall provide for the establishment of inspection points within this State and on each highway, road, or railroad entering this State; and he shall provide for inspection of all persons entering this State by boat, airplane or any other method.

SEC. 7. Any person authorized by the Governor to inspect prospective entrants into this State is hereby authorized to examine *under oath* such prospective entrants for the purpose of determining whether such prospective entrants are paupers, vagabonds, or fugitives from justice. Any person may be restrained from entering this State if the person so authorized reasonably determines that he is a pauper, vagabonds, or fugitive from justice.

SEC. 8. Every person whose right to enter this State is questioned must affirmatively establish that he is not a person whose entry is prohibited under the provisions of this act.

Any person who has been refused the right to enter the State of California as herein provided shall have the right to bring a proceeding in the superior court of the county which he was prohibited from entering to test the validity of his exclusion. The defendant in said suit shall be the Attorney General of the State of California, whose duty it shall be to defend the same. Process shall be served upon said Attorney General, who shall make answer within ten days after the same is served upon him.

Said suit shall be heard and determined as soon as the convenience of the court will permit. The burden of proof shall be upon the plaintiff to establish affirmatively that he is not a person whose entry into this State is prohibited by the provisions of this act.

SEC. 9. Any person who enters the State of California in violation of this act is guilty of a misdemeanor.

SEC. 10. Should any person enter the State of California in violation of the terms of this act, then upon the discovery of such person at any place in this State he shall be summarily deported from this State.

SEC. 11. If any section, subsection, clause, or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act. The Legislature hereby declares that it would have passed this act irrespective of the fact that any one or more sections, subsections, sentences or clauses or phrases thereof be declared unconstitutional.

If in any action, suit, or proceeding it be adjudged that any provision of this act is unconstitutional as applied to the particular facts involved in such action, suit, or proceeding, any judgment or decision rendered therein shall not affect the application of the provisions of this act in any other action, suit, or proceeding.

APPENDIX E

(Following are copies of articles and headlines from the files of the Florida Times-Union and the New York Times from 1934 to 1937 relating to border patrols at the Florida State line.)

[New York Times, December 6, 1934]

FLORIDA TO BAR THE INDIGENT

TRENTON, Dec. 5.—David Scholtz, [sic] Governor of Florida, today asked Governor A. Harry Moore to cooperate in preventing transients from making their way to Florida. Governor Scholtz [sic] served notice that no more transients would be admitted to Florida camps and those trying to enter the State without means of support would be turned back.

[Florida Times-Union, December 7, 1934]

SHOLTZ FEARS JOBLESS MAY PROVE MENACE

CALLS FOR COOPERATION IN PREVENTING NEEDY INVADING STATE

TALLAHASSEE, Dec. 6.—The possibility of a crime wave as a result of the unprecedented number of jobless transients being in the State presented a problem today for public officials.

Calling upon sheriffs and others to make every effort to get the jobless wanderers started on their way home, Gov. Dave Sholtz said "this is one of the greatest perils that has ever threatened our State." * * *

Governor Sholtz urged public officials to "take drastic action" so that "this threatened evil may be nipped in the bud. After hordes of these people are here it may be too late."

Earlier this week, Governor Sholtz telegraphed governors of all States east of the Mississippi River to "serve notice" upon their people that no more transients could be accommodated in this State, and that there was no available employment.

If transients without jobs or visible means of support come to the State, an effort will be made to turn them back at the State line. Should they succeed in entering the State they face "arrest, which would be unpleasant and unprofitable to all concerned," the Governor warned. * * *

[Florida Times-Union, December 11, 1934]

PATROL ESTABLISHED TO CHECK TRANSIENT TRAVEL INTO FLORIDA

TALLAHASSEE, Dec. 10.—A motorized patrol took up its task of turning back transients at the Florida border today.

E. A. Schurman, highway department official under whose direction the patrol operates, said passenger automobiles will not be molested unless the equipment indicates the occupants "are travelling on a shoestring." * * *

[New York Times, December 23, 1934]

FLORIDA EXPECTS INFLUX OF JOBLESS

GOVERNOR ASKS OTHER STATES TO HELP TURN BACK HORDE OF DRIFTERS—NO WORK FOR THEM THERE—BORDER PATROL SUGGESTED AS THE FEDERAL TRANSIENT CAMPS ARE FILLED

LAKELAND, FLA., Dec. 20.— * * *

BORDER PATROL SUGGESTED

Governor Dave Sholtz has taken a hand in the matter by announcing to all and sundry of the jobless that stringent measures will be resorted to if there is the slightest necessity for such a step. He has also appealed to Governors of eleven other States to cooperate in keeping back the usual horde of drifters. He has gone so far as to suggest a patrol along the Georgia-Florida line to investigate the status of those whose appearance arouses suspicion, asserting that the situation "is one of the greatest perils that has ever threatened the State." * * *

Federal transient camps can take care of a maximum of 11,000, and that limit was reached some time ago. Prospective applicants who have not yet reached Florida should be warned quickly that they will be bitterly disappointed. This is contrary to a report broadcast through the other States several weeks ago. It inadvertently or erroneously urged the jobless to come to balmy Florida, and failed to point out that normally balmy weather does not keep one from needing food and clothes. * * *

[Florida Times-Union October 16, 1936]

INDIGENTS PROVEN RESOURCEFUL BY ATTEMPTS TO ENTER STATE

Enterprising hitchhikers, many with scant means of existence, develop new methods from day to day to outwit an alert motorized patrol Florida has established to stem the flow of indigent transients.

Patrolmen guarding the State's frontier against penniless invaders admit themselves puzzled in coping with some of the ruses employed against them.

In the first three days of the patrol's work for this season, they have turned back scores who sought admittance on arterial highways—most of them bumming rides on trucks entering the State.

By the end of this week, most of the patrol stations will be sufficiently manned to stop every vehicle entering the State to see that it contains no hitchhiker.

The day when the poor and jobless saunter across the border, unharmed and unhindered, are gone. Modern transportation methods are utilized to get into the State in the guise of routine business or pleasure travel.

Some transients are spending 25 to 50 cents for bus or train fare from some town in South Georgia to the nearest Florida point. From Kingsland, Ga., to Yulee, Fla., is but a few miles, for instance, and the fare is within easy reach of all but the poorest.

Others found it easy to pay truck drivers for a ride into Jacksonville, Lake City, Monticello, or one of the other gateway cities of Florida. But this practice is falling rapidly into disuse, because trucks are being stopped and their hitchhiker passengers are being sent walking back home.

Patrolmen, stopping rattle-trap cars whose occupants look like they might become charges of the State, sometimes are embarrassed.

"I stopped one car that looked like it was about to fall apart," a patrolman related. "I asked the driver, a Tennessee mountaineer, if he expected to find work in the State. He said he wasn't looking for a job and wouldn't have one."

"I questioned him some more, and then asked:

"'Well, have you got any money?'

"'Why didn't you ask that in the first place?' he came back. 'Sure I've got money.' And produced a fat roll of bills."

One boy was taken off a truck early this week and, after some questioning, admitted he had paid the driver $2 for a ride from Savannah to Jacksonville to avoid the motor patrol.

"The truck driver had left by then," a patrolman related, "or I would have arrested him, or at least have made him give the boy his money."

Most of the men return peacefully. None is driven off by force. If they won't go after being told to do so, they are arrested or (sic) vagrancy.

A few argue their constitutional rights are being overstepped, but the patrolmen only listen.

On the Savannah-Jacksonville highway approximately 30 were turned back Monday and Tuesday. From the Valdosta-Lake City patrol station came the report more than 50 had been stopped.

Few appeared Wednesday because of intermittent rains that kept them well back from the State line under shelter.

[New York Times, October 25, 1936]

FLORIDA AGAIN ACTS TO BAR "DRIFTERS"

STATE, WHILE "INVITING WORLD" SETS UP A PATROL TO KEEP OUT "UNDESIRABLES"—25,000 HALTED A SEASON

Florida finds itself in the embarrassing position of inviting the world to come here for the Winter and then stopping thousands of would-be visitors at the State line to ascertain whether they would be good visitors.

* * * for the third successive season Governor Dave Scholtz (sic) has established a border patrol to keep out those who might become a burden to others. Upon arriving at the State line, "drifters" who have no money and no prospects of a job are being turned back with the firm explanation that they are not welcome. * * *

The border-patrol method is the most effective Florida has been able to devise for the protection of the better class of Winter visitors. It is sociological, not mercenary, but it obviously is not a complete success. Too many ingenious undesirables manage to slip past the guards.

However, as fast as they cross the State line and proceed down the Peninsula they are running into a second obstacle—the local police. In most of the larger communities like Miami, St. Petersburg, Tampa, and Jacksonville, police have begun an intensive drive on vagrants. * * *

[New York Times, November 20, 1936]

Florida Bars Out 2,000 by "Poverty Quarantine"

Jacksonville, Fla., Nov. 19.—The Florida motor patrol, conducting a "border blockade" against penniless transients, estimated that by this week end it will have shunted from the State 2,000 hitch-hiking, rod-riding, and flivver-driving itineraants.

The second year of the poverty quarantine has brought a lessened flow of warmth-seeking transients, it was said, although comparative figures are lacking. Governor Dave Sholtz, who ordered the blockade, said that about 50,000 were turned back last season.

The Florida winter season is not yet under way, and a greater number of jobless wanderers are expected with the New Year.

The patrol was established to keep persons without funds from entering the State and turning to crime for support, Governor Sholtz said. They are ineligible for State or Federal relief.

[New York Times, December 20, 1936]

Florida is Divided on Border Patrol

OPPONENTS OF BAN ON INDIGENTS ATTACK MOVE—OTHERS POINT TO REDUCED CRIME

Lakeland, Fla., Dec. 18.—Florida is a house divided against itself over the question of whether Governor Dave Sholtz shall continue to maintain a patrol at the State line to turn back would-be Winter visitors who have little or no money and no job in sight.

Maintained during the past two Winter seasons, the patrol drew no audible complaints from Floridians, but objections have been expressed in every section of the State during the past few days.

It is undemocratic and unconstitutional to prevent United States citizens from passing at will from one State into another, say Floridians who view the patrol as the instrument of dictatorship.

It is a reasonable and effective method of avoiding a congestion of parasitic indigents and criminals, argue those who stand with Governor Scholtz [sic] in the matter of turning back visitors.

THOUSANDS ARE STOPPED

Several thousand persons described as "penniless drifters" have been stopped at the Georgia-Florida line this season, and other thousands will be halted if public opinion and a new Governor do not abolish the patrol.

* * * Criticism of the patrol plan by the press throughout the country has stimulated increasingly vigorous protest among Floridians who fear it will mar the State's reputation for hospitality. They assert that a welcome should be extended to rich and poor alike, especially since more jobs are available when the tourist arrive and citrus crops are being harvested. * * *

[New York Times, September 11, 1937]

FLORIDA LIFTS BAN ON IDLE

GOVERNOR DOUBTS LEGALITY OF ROAD CLOSING, BUT WARNS RACKETEERS

TALLAHASSEE, FLA., Sept. 10—Florida's boundaries, closed for two winters to fundless job-seekers, will be open this year to all who come South. But "vagrants, crooks, and racketeers in fine limousines or Pullman cars" had best beware of local police and Sheriff's forces.

Governor Fred P. Cone gave the warning today in announcing he would not reestablish the road patrol that formerly guarded five arterial highways into Florida, "unless it becomes necessary."

"I don't think it's constitutional to tell a man he can't go from one State to another," the Governor said. "Just because a man's poor and wants to find a job in Florida is no reason for keeping him out of the State. Why, some of the worst people that come to Florida in the wintertime are racketeers in fine limousines and Pullman cars. There are plenty of crooks in fine automobiles."

[New York Times, October 3, 1937]

GOVERNOR CONE HAS POKED OLD EMBERS INTO FLAMES BY ANNOUNCING * * * HE WILL NOT ESTABLISH A BORDER PATROL TO KEEP OUT JOBLESS PERSONS * * *

THE BORDER PATROL

Most Miamians who are calling for a border patrol at the northern boundary of the State are doing so on the ground that Miami will have to bear most of the burden if indigent transients are allowed to enter. They argue that most Winter transients, seeking a warm climate and pick-up jobs, eventually land in Miami.

Waving cities aside, the Governor insists that it would be exceedingly undemocratic to close the State to unfortunates.

Miami is taking steps locally to combat any influx of dependent camp followers.

* * *

APPENDIX F

(Executive Order of Governor Edwin C. Johnson, Colorado, dated April 20, 1936)

STATE OF COLORADO,
EXECUTIVE CHAMBERS,
DENVER.

(Copy of)

EXECUTIVE ORDER

PROCLAMATION

Whereas certain individuals within the State of Colorado are acting in conjunction with large numbers of persons outside of said State who are aliens and indigent persons to effect an invasion of said State; and

Whereas it has been made to appear to me that a large number of said persons who are without means of support are entering, and, unless prevented, will continue to enter the State by crossing the southern boundary thereof, and

Whereas the entering of aliens and indigent persons into this State in such large numbers constitutes an invasion that will create, encourage and cause a condition of lawlessness and inevitably tend to discontent and unrest among the citizens of this State generally, and particularly along the southern border thereof, and will lead to social disorder and disturbances among our people, more particularly because the existing economic depression has rendered it impossible for many of our own citizens to find employment or to procure means of subsistence other than through public and private charity, and

Whereas said invasion into this State, if continued, may result in serious commotions and disturbances of the public peace and produce conditions of public disorder which the local and State authorities will be unable to cope with, and

Whereas, by reason of the conditions hereinbefore set forth an emergency exists;

Now, therefore, I, Ed. C. Johnson, Governor and Commander in Chief of the Military Forces of the State of Colorado, by virtue of the power and authority

in me vested, do hereby declare and proclaim that the area consisting of a strip of territory one mile in width along the southern boundary of the State, from the east boundary thereof to the west boundary thereof is threatened with an invasion and the same is hereby placed under martial law.

The Adjutant General, Neil W. Kimball, is hereby directed to order out such troops as in his judgment may be necessary and proceed therewith to the locality herein described, and, with no more interference with the ordinary operation and processes of civil government in said territory than shall be necessary in the use of said military forces, to prevent and repel the further invasion of this State by any such aliens, indigent persons, or invaders, and to repel and return all such persons found in said territory to the State from which they shall have entered said described area.

Furthermore, I call upon all patriotic and law-abiding citizens of said State to desist and refrain from, in any manner aiding, abetting, or encouraging any such aliens, indigent persons, or invaders in entering the State, or in any way interfering with the due execution and process of this proclamation.

In witness whereof, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Colorado.

Done at the State Capitol, in Denver, this Eighteenth day of April, in the Year of Our Lord, One Thousand Nine Hundred and Thirty-six.

Governor and Commander in Chief.

Attest:

Secretary of State.

APPENDIX G

(Following are copies of articles and headlines from the files of the *Denver Rocky Mountain News* relating to the border patrols at the Colorado State line during 1936.)

[Denver News, April 19, 1936]

Troops Close State to Aliens, Jobless

GOVERNOR DECLARES MARTIAL LAW AND MOBILIZES NATIONAL GUARD ON SOUTHERN BORDER TO CHECK ALIENS—DENVER NATIONAL GUARD WILL LEAVE SUNDAY TO PATROL HIGHWAYS AND INSPECT EVERY TRAIN

Drive is drastic

PLAN IS TO ELIMINATE ALL WHO COME HERE JUST TO GET ON RELIEF ROLLS

By Barron B. Beshoar

Khaki-clad troops of the Colorado National Guard will move into Southern Colorado early Sunday to repulse a threatened invasion of alien beet laborers and indigent workers from Mexico, New Mexico, and Texas.

In a sensational move, Governor Johnson Saturday declared a state of martial law to exist over a strip of territory one mile wide, extending 360 miles along the Colorado-New Mexico border from Kansas to Utah.

Following issuance of the executive order—which becomes effective immediately—Adjt. Gen. Neil W. Kimball laid plans for mobilization of troops from Denver guard units and F Battery at Monte Vista.

TROOPS LEAVE SUNDAY

The Denver troops will leave early Sunday in National Guard trucks for Trinidad. By a peculiar coincidence, they will pass Ludlow Field, north of Trinidad, where miners are holding services in commemoration of the 22d anniversary of the Ludlow Massacre, in which guard troops participated.

Tents will be pitched at the border on highways leading from New Mexico into Trinidad, Branson, Antonito, Durango, and Cortez, and arrangements will be made to inspect trains coming in over three railroad lines from the south, the adjutant general said.

According to the terms of the governor's proclamation, military rule will prevail over the affected strip, but the guard command has orders to interfere as little as possible with the civil authorities.

Persons or corporations anywhere in Colorado conspiring to violate the proclamation by importing aliens or indigent persons will be arrested and prosecuted by the military authorities, the governor said.

MUST BE STOPPED

"Importation of laborers must stop immediately," the governor said as he signed the proclamation. "The Denver & Rio Grande Western Railroad and others are shipping in track laborers at the present time.

"We have received word that at least 75 men were brought into Pueblo by way of the San Luis Valley.

"Ike Williams, a labor contractor, has gone to New Mexico and Texas with the intention of bringing a whole trainload of beet laborers north to Boulder Countty [sic].

"I have also learned that sheep shearers are coming into the state in large numbers."

In addition to ordering mobilization of as many troops as may be needed, the governor called on the State Highway Courtesy Patrol and peace officers of Southern Colorado counties to aid in turning back the threatened invasion.

He also called "upon all patriotic and law-abiding citizens of the state to desist and refrain from, in any manner, in aiding, abetting, or encouraging any such aliens, indigent persons, or invaders in entering the state, or in any way interfering with the due process of this proclamation."

The recently organized port-of-entry system will be depended upon for the time being to repel undesirables from the Eastern, Western, and Northern borders, the governor said.

"If reports indicate such action is necessary I will declare martial law along these borders, too," he asserted.

His action in placing a cordon of guards along the southern border was similar to steps recently taken by Los [sic] Los Angeles and the state of Florida.

All trains entering the statet [sic] will be inspected, and all trucks and passenger automobiles will be stopped at the border. In the event the travelers are unable to show financial responsibility they will be turned back.

Offices and sleeping quarters of the troops—who will guard the border at all hours—will be maintained in tents pitched on the Colorado side of the state boundary line.

Governor Johnson expects the drastic measure will stop importation of labor into Colorado and halt the stream of indigents who enter the state, offer to work for less than Colorado labor and eventually swell the relief rolls.

Adj. Gen. Kimball will establish headquarters in Trinidad Sunday and remain in the field until such time as the governor decides the emergency has passed and lifts the martial law order.

PATROL OFFERS AID

Among the officers who will assist him are Lieut. Col. E. A. Austin, Maj. William O. Perry, judge advocate, who will be in charge of legal matters, and Capt. Joseph E. Ryan.

Joseph Marsh, supervisor of the State Highway Courtesy Patrol, placed nine patrolmen at Kimball's disposal Saturday and offered to draw additional men from the northern part of the state if necessary.

Approximately 50 Guardsmen will go on duty Sunday and more will be mobilized if necessary, Adj. Gen. Kimball said.

Action of the military authorities along the border will be final and there will be no recourse to the courts under the terms of a martial law proclamation, he said.

The governor threatened March 13 to call out troops to stop importation of beet labor but dropped the matter after being assured by officials of the Great Western Sugar Co. and Paul D. Shriver, state director of the W.P.A., that such action would not be necessary.

FIRST MARTIAL LAW SINCE '21

At the time, Director Shriver informed the governor he was cutting his rolls to allow qualified persons to engage in beet work. Hundreds have been made available for farm labor, but importation of workers continued to threaten the state, the governor said.

When informed of the governor's action, William L. Petrikin, chairman of the board of the Great Western Sugar Co., said:

"We'll employe [sic] all of the beet labor available in Colorado and after that — well, if he doesn't want beets grown in Colorado that's that."

The governor's order Saturday marks the first time martial law has been declared over Colorado territory since 1921 when Oliver H. Shoup, who was then governor, sent troops to Walsenburg, declaring a state of insurrection and rebellion existed.

Guardsmen were sent to Pueblo after the 1921 flood, to the state penitentiary during the attempted break in 1929, and were sent by Governor Adams to the Columbine mine in Northern Colorado in 1927 tho a state martial law was not declared at the time.

The most lengthy period of martial law was during the coal strike of 1914 in Southern Colorado. The State is still paying interest on more than one-half million dollars worth of so-called insurrection bonds as a result of the industrial disturbance. * * *

[Denver News, April 26, 1936]

Troops Move into Action at Dawn to Prevent Invasion by Indigent

Armed force acting under martial law to stop all — entire southern border of Colorado will be patrolled by soldiers to halt aliens, needy

Money to be test

Autos, Busses, and Trains will be Searched by National Guardsmen

Armed Colorado National Guardsmen moved on the state's southern border Sunday and at dawn Monday they will spread out fanwise to cover the 360 square miles placed under martial law by Governor Johnson and to enforce his order to turn back all indigent laborers and aliens seeking entry into Colorado.

With the detachment from Denver went Adj. Gen. Neil West Kimball, chief officer of the Guard, who will set up his headquarters at Trinidad.

Thirty-six men and their officers left the Guard armory at E. Third ave. and Logan st. at noon for the "front" — the strip of land one mile wide and extending from the Kansas to the Utah border.

MONEY IS THE TEST

The 36 men to leave Denver were members of the tank and artillery units of the guard, comprised in the 157th Infantry and the 168th Field Artillery.

Reinforcements Monday from other guard units and co-operation from county officers and the State Highway Courtesy Patrol will furnish enough men to place guards at all principal ports of entry from New Mexico and the Oklahoma Panhandle.

Every automobile, bus, and train — with the exception of the first-class passenger limiteds — will be stopped and searched.

Money and financial responsibility is the test laid down by Governor Johnson for entry into the state.

"If they do not have money, or means of support, do not let them pass," is his order.

"Colorado cannot care for indigents from other states, and these people become charges of the state after the brief spring labor season ends."

RAILROADS COOPERATE

General Kimball, before leaving Denver, conferred with railroad representatives and announced they assured him of their cooperation in stopping and searching trains.

"We will not stop the transcontinental trains," he said.

"We are particularly interested in the local trains on which some companies might attempt wholesale importations of cheap labor.

"We are going to search these trains and also all freight trains. The railroads told us they were particularly anxious to halt the influx of boboes on these freights. They said they had attempted to do this themselves but had failed."

Four high speed army trucks and a caravan of automobiles took the Guardsmen from Denver Sunday.

PLANES MAY BE USED

Maj. Virgil D. Stone, commander of the 120th Observation Squadron of the Guard, is expected to fly to Trinidad Monday.

He was awaiting orders from General Kimball Sunday night. It is believed several Guard planes may be sent to the border the early part of this week and that at least one will be kept in service for observation and communication purposes thruout the existence of the martial-law edict.

At Walsenburg, Capt. Joseph E. Ryan and Lieut. Col. E. A. Austin left the main detachment from Denver Sunday afternoon.

They continued alone, Captain Ryan to Antonito and Colonel Austin to Durango.

Thus, the 360-mile strip of border will be divided into three sectors, with General Kimball in charge of the eastern, Captain Ryan the central, and Colonel Austin the western.

Battery D of the 168th Field Artillery at Monte Vista, commanded by Captain Harry E. Kistler, will furnish the men for the commands of Captain Ryan and Colonel Austin.

ROADS TO BE PATROLLED

Principal ports of entry to be patrolled in the eastern sector are:

The road leading from Oklahoma to Springfield, Colo.

The road to Branson, Colo., from Clayton, N. M.

The coast-to-coast highway entering Trinidad from Raton, N. M.

Captain Ryan's command will patrol the main road from Chama, N. M., into Antonito and numerous smaller highways.

The western sector will have two principal ports to watch, the road from Gallup, N. M., to Cortez, Colo., and the road from Farmington, N. M., to Durango.

CHARGES ARE DENIED

Several large users of labor Sunday denied the governor's charges, contained in the proclamation he issued late Saturday, that they were "conspiring" to import cheap labor.

"We are cooperating with all the governor's recognized labor organizations in obtaining labor we need for sugar-beet fields," said C. V. Maddux, labor representative for the Great Western Sugar Co.

"Of course, until the growing season is pretty well under way, we cannot determine just how many laborers we may need. But we seem to have plenty."

Similar statements came from several railroads. Executives contended they were obtaining their labor from federal and state employment or relief organizations.

SITUATION UNCHANGED

Paul D. Shriver, State WPA administrator, who engaged with the governor in a dispute a year ago when the governor then threatened to call out the guard to halt aliens or indigent workers from Colorado, said as far as he knows the situation still is unchanged.

"Federal authorities have informed us we are unable to purge relief rolls of aliens," Shriver said. "The rules provide there shall be no discrimination. I have been told that an unemployed alien gets just as hungry as a naturalized or other citizen of this country.

"Immigration authorities also have informed the governor that an alien can be deported only if he is a criminal.

"We recently dropped between 6,500 and 7,000 beet sugar workers from relief rolls because of seasonal work in beet fields available for them. I understand there are about 15,000 beet workers employed in the state each year. There seems to be sufficient laborers of this class.

"We cannot get all the people on relief rolls jobs in beet fields. It takes a certain amount of skill to do that work. The ones we dropped have had experience in beet fields."

[Denver News, April 21, 1936]

Colorado Troops on Border Turn Back 70 Persons Who Have Neither Jobs Nor Cash

TEARFUL SCENES ENACTED AS NATIONAL GUARDSMEN LAUNCH DRASTIC DRIVE TO KEEP OUT INDIGENTS—EVERYONE STOPPED—MORE MILITIAMEN WILL BE CALLED OUT TO TIGHTEN UP PATROLLED REGION

Trinidad, Colo., April 20.—Seventy men, women, and children who knocked at Colorado's Southern gateways Monday found the way blocked by armed national guardsmen. * * *

No matter how they arrive—in sleek, shiny limousines or battered flivvers, by passenger train or by freight train, by spacious bus or ancient truck—everybody was forced to pass the inspection of the guards. * * *

Joe Rhonish, 22, and his brother, Lawrence, 21, drove up from Maxwell, N. M., in an old coupe. They told the Guardsmen they were on the way to Colorado in a search for a place to farm.

"Have you any money?" asked Lieutenant Holson.

"A little," they replied, but, when they could show the patrol only $3.50, they too, were turned back to New Mexico. * * *

The first Denver car to be halted at Ranton Camp contained William H. Saunders, new football coach at the University of Denver, and Mrs. Saunders. They explained good-naturedly they were on the way from their ranch in New Mexico to Denver and were waved on with a smile.

[Denver News, April 22, 1936]

Troops Plug Loopholes in Alien Patrol

MORE SENTRIES ASSIGNED TO POSTS ON BORDER IN BLOCKADE AGAINST ALL INDIGENT AND JOBLESS—MANY TURNED BACK—RUMORED ATTEMPT TO BE MADE TO SMUGGLE IN LABORERS DURING NIGHT

Trinidad, Colo., April 21.—Colorado's embargo against penniless humanity Tuesday faced the threat of blockade runners, operating on a wholesale scale and seeking to pierce the border patrol which—theoretically, at least—extends 360 miles along the State's Southern boundary. * * *

A number of Spanish-speaking Guardsmen, dressed in faded overalls and carrying the few necessities of the hitchhiker, have been sent secretly over the border into New Mexico and Oklahoma to mingle with itinerant laborers and learn as much as possible about reported plans for breaking thru the blockade. * * *

Persons found guilty may be tried in a court martial, since the district is under martial law, it was pointed out.

[Denver News, April 22, 1936]

Johnson Assures Governor Tingley

Farmington, N. M., April 21.—Gov. Clyde Tingley said here Tuesday night he had received telephonic assurances from Governor Johnson of Colorado that New Mexico workers would be admitted to Colorado as soon as a "reserve" of labor in that State had been exhausted.

"Governor Johnson informed me that as soon as there is a lack of laborers in Colorado he will allow New Mexicans to enter the State, but he will not permit entry of aliens from Old Mexico," said Governor Tingley.

"I told Governor Johnson that I did not want residents of this State barred from entry into Colorado, and also that I did not want to be forced to keep Coloradans out of New Mexico. I pointed out that a substantial number of Coloradans are employed in New Mexico."

[Denver News, April 23, 1936]

Tingley Warns Troops Not to Cross Border

COLORADO NATIONAL GUARD NOT WELCOME IN NEW MEXICO, HE DECLARES

Warning to the Colorado National Guard to stay out of New Mexico in carrying out its border blockade against indigent laborers came from Gov. Clyde Tingley of that State Wednesday. * * *

[Denver News, April 24, 1936]

New Mexico May Bar Colorado Goods

GOV. TINGLEY THREATENS TO HIT BACK AT STATE MILITIA—RESENTS "HIGH-HANDED ATTITUDE" IN REFUSING TO ALLOW CITIZENS TO CROSS SOUTHERN LINE—TALKS REPRISALS—JOHNSON IS EXPECTED TO CONFER WITH HIM BY TELEPHONE ON CRISIS

Complications with New Mexico over Colorado's militarized southern border neared a serious stage Thursday and it was expected Governor Johnson would confer Friday by telephone with Gov. Clyde Tingley in Santa Fe.

Reconnaissances in New Mexico by members of the intelligence staff of the Colorado National Guard and the dumping of the unwanted labor back across the border drew the fire of Governor Tingley in two official statements during the day.

In one, he threatened to bar shipments of Colorado goods into New Mexico unless Colorado's "high-handed attitude" is modified. * * *

"You would think New Mexico had been cut off from the United States and was a foreign country," he said.

"These people are not aliens any more than the people of Colorado are aliens. They are descendants of people who settled this country when Colorado was still a part of Mexico." * * *

[Denver News, April 25, 1936]

New Mexico's Senators Hit Colorado Ban

HATCH SAYS PROCEDURE VIOLATES CONSTITUTION; CHAVEZ HINTS REPRISAL

Washington, April 24.—New Mexico's two Senators—Dennis Chavez and Carl Hatch—believe Governor Johnson is exceeding his authority in establishing a military embargo on the Colorado-New Mexico border.

"If Governor Johnson is actually discriminating against citizens of New Mexico," said Senator Hatch, "I think he is transcending his authority as governor and I respectfully refer him to Section 2, Article 4 of the United States Constitution."

The section referred to by Senator Hatch reads:

"* * * citizens of each State shall be entitled to all privileges and immunities of citizens in the several States."

"It is too bad such a thing had to happen," Junior Senator Chavez exclaimed. "I think Governor Johnson will see the error of his ways. * * *

PLACE COLORADO ENGINEERS

"New Mexico has been most generous to people from Colorado. Many of her graduates from Mines and Aggies are given jobs soon after leaving school as engineers on our highways and in other places.

"These are comparatively high-salaried positions as contrasted with the wages paid laborers seeking employment in Colorado beet fields and they are apt to suffer in the future if Governor Johnson persists in his policy."

[Denver News, April 26, 1936]

Border Ban on Indigent Nearing End

JOHNSON, WORRIED OVER INCREASING PROTESTS, IS EXPECTED TO LIFT ORDER WITHIN NEXT 10 DAYS—POLICY IS CRITICIZED—BUSINESSMEN CONCERNED OVER RETALIATION BY NEW MEXICO PATRONS

Collapse of the border blockade and withdrawal of the martial law edict along the 390-mile southern boundary of Colorado was forecast in political and Statehouse circles Saturday as protests against Governor Johnson's drastic action to keep alien and indigent labor out of the State increased in number and heat. * * *

Repercussion to the militarization of the State's Southern boundary—a step which has been branded as contrary to the Constitution of the United States—is causing Governor Johnson grave concern, it was learned.

NUMEROUS PROTESTS

Added to the opposition within the State is that from New Mexico, where movements have been launched to boycott Colorado goods and where Gov. Clyde Tingley has threatened to bar trucks bearing shipments from Colorado.

APPENDIX H

In the District Court of the United States, Southern District of California

CENTRAL DIVISION

John Langan, plaintiff, v. James E. Davis, as Chief of Police of the City of Los Angeles, defendant. No 841 S in Equity

OPINION

Stephens, District Judge.

John Langan, the plaintiff or complainant herein, is a citizen of California and of the United States. According to his bill of complaint, on or about 5 A. M. of February 10th, 1936, the complainant was entering the State of California (by automobile) on the public highway from Arizona and was accosted by policemen of the City of Los Angeles, California, acting under the direction of the Chief of Police of such city, and was stopped, taken into custody, molested, questioned, and threatened ejection from the state unless he did then and there prove to the policemen's satisfaction that he was not a resident of another state and was not an undesirable citizen. Langan was, at the time, in pursuit of his lawful business which frequently calls him across the state lines of California; had committed no crime nor was he accused thereof, and the officers possessed no warrant for his arrest. Langan claims that he was thereby deprived of his constitutional rights as guaranteed by the Fifth and the Fourteenth Amendments to the Constitution of the United States. He also claims that he has suffered a money loss of $5,000.00. He asserts that his future legal right to go freely across the California state lines in the lawful calling in which he is engaged is endangered, and requests an injunction against the Chief of Police of the City of Los Angeles from continuing to exercise the claimed right to repeat the procedure above set out in brief, or to go further as is indicated possible under a written order which is annexed to the Bill and made a part thereof. The complainant prays that the said Chief of Police be enjoined from "stopping, molesting, questioning, fingerprinting, arresting, or otherwise interfering with plaintiff's (complainant's) entering California or with plaintiff's traveling in California or with plaintiff's traveling between any of the states bordering upon California."

The order attached to and made a part of the bill is a five page, single spaced, typewritten document headed "Office of the Chief of Police, Los Angeles, Police Department, February 1st, 1936, Special Instructions. To the Officers of the Headquarters Division." It is signed James E. Davis, Chief of Police, Official: Homer B. Cross, Deputy Chief of Police.

(Digest of the Order)

1. A "Headquarters Division" is created under command of a designated Captain with "post of command" in Los Angeles City Hall.

2. "The immediate mission of the Division shall be that of covering the points of ingress, both highway and railroad, into the State of California."

3. "The field of operation shall include the counties through which the highways or railroads enter the State of California." Then follows the names of counties in which the field of operation lies, with their county seats and names of sheriffs. "The field of operation for administrative and tactical purposes is divided into three areas": Northern, Central, and Southern. Each area shall be commanded by a Lieutenant of Police and designated "Area Commander" who shall be immediately subordinate and responsible to the captain commanding the Headquarters. Command posts are designated for each area.

4. Operations and personnel of each county in field of operations shall be commanded by a Sergeant of Police under and responsible to the appropriate Area Commander. For practical operation squads of seven policemen are to serve under Acting Sergeants. "Points of advantage" are to be selected for covering railroad and highway ingress. "Much latitude is given the squad and Area Commander in the execution of this plan. Individual initiative is encouraged to determine the proper modus operandi."

5. Advantage is to be taken of State Agricultural Quarantine Stations in covering highways, as they are strategically located.

6. Railroad cooperation as to every possible assistance to special agents in execution of plan and as to stopping freight trains, "return of subjects that have been removed from incoming trains to points without the State of California" has been assured.

7. "The sheriffs of each of the several counties hereinbefore listed have assured us of their cooperation and have agreed to deputize, without remuneration, the officers from this Department assigned to their respective counties. This is for the purpose of giving unquestioned authority to the officers of this Department while acting as peace officers in the respective counties. All officers are directed to cooperate with the sheriffs and conform to the general policies that he may promulgate."

8. "The squad leaders and the superior officers of the division are instructed to afford water and other essential subsistence as well as to insure sanitary conditions for those subjects removed from incoming trains during the interim between their removal from the trains until they are placed on a train leaving the State of California."

9. "The cooperation of the local sheriffs and railroad authorities shall be solicited in these matters."

10. "It may be necessary to erect barricades and afford a degree of shelter to those subjects awaiting their exit from California. The sheriffs and the railroads may prove of material assistance in this matter."

11. The officers assigned to the work are volunteering. They will be paid by the city of Los Angeles. For additional expense to officers it is planned to pay maintenance, medical costs.

12. No other costs allowed, these to be kept at minimum.

13. Covers details as to injuries and reports thereon, etc.

14. If subsistence and housing costs are not provided by city, ten days' vacation per month to be granted to each officer.

15. The time of operations is uncertain. Officers may take their own automobiles and, when transporting other officers, gas and oil will be furnished.

16. Police Department automobiles will be assigned to the division commanders, Areal Lieutenants, Sergeants of the County, and certain squad leaders. Credit cards will be issued for auto supplies.

17. State Teletype Stations are to be used.

18. Officers to provide warm clothing; when on duty to wear police uniforms, overcoats, and head-gear, discretionary to conform to weather. Los Angeles Police Department badge to be worn on left breast, apparent and visible.

19. Skid chains are to be used in cold sections.

20. "Officers shall extend every effort to secure the cooperation of the peace officers of the state, county, and municipalities in which they may be working. The same is true of public officers and citizens."

21. "Each subject taken into technical custody will be fingerprinted. The impression shall be taken upon three cards and the Los Angeles Police Department Identification Sheet, making a total of four sets of impressions for each subject. Any additional information will then be entered upon the cards and descriptive sheet and then distributed as follows:

"1. Shall be air-mailed to the Federal Bureau of Investigation, Dept. of Justice, Washington, D. C.

"1. To be forwarded through ordinary mail to the Record Division, Los Angeles Police Department.

"1. To be retained at the Sheriff's office of the County in which the squad is operating."

Then follows detail of handling fingerprinting and communication with authorities wanting persons found through identification.

22. Juvenile subjects handled as sheriff of county prescribes.

23. Advantage should be taken of the State Relief Administration in handling juveniles, and parents with families entering State particularly by highway.

24. "The State statutes under which we may be operating upon this plan of action are as follows:

"1. Those taken from the trains are taken into custody for violation of Sec. 587c of the Calif. Penal Code, to wit: Evading Railway fare, a misdemeanor.

"2. Those subjects hitch-hiking or wandering along the highways without reasonable amount of funds are in violation of Sec. 647, Penal Code of the State of California. Subsection 2 of this section defines them as vagrants wandering from place to place without visible means of support."

25. "Officers working on this detail shall shake down every subject, removing from his person any and all dangerous weapons."

26. This paragraph sets out a detailed system of reports by commanding officers as to activities. The original of consolidated report to go to Chief's office. These reports do not go to any outside Los Angeles Police Department.

27. A copy as to each arrest report, where subject placed in confinement, shall be forwarded to the Division Commander, City Hall, Los Angeles.

We shall hereinafter occasionally refer to this document as the "plan."

An order has issued in this cause requiring the Chief of Police to show cause why he should not be temporarily enjoined from molesting complainant in any of the ways suggested by this plan.

The defendant Chief of Police has moved to dismiss the action on the ground that this court is without jurisdiction in the premises; and has made several other motions, supported by affidavits, which need not be noticed at this juncture.

The consideration of the motions and the order to show cause came on for argument coincidentally, after written briefs had been furnished the court, and proceeded by consent primarily upon the jurisdictional question. The United States District Court is one of limited jurisdiction and can entertain cases only after statutory authorization under the limitations of the Constitution.

It will be well in the beginning to dispose of a diverting phase of the case. There is mention of deputization of policemen as deputy sheriffs, but the complainant charges the Chief of Police alone in his official capacity with the alleged wrong and the jurisdictional question must be determined upon that basis. If the case is meant to be based upon acts of deputy sheriffs there are no allegations in the complaint tending to make the Chief of Police of Los Angeles city the responsible party.

Counsel for both parties approach the jurisdictional question from the standpoint of legality of the acts alleged, whether by the Chief or by deputy sheriffs. But I deem it more fundamental to first consider whether the Chief or his men, as policemen, had any competent authority to act at all in furtherance of such plan. If they could not legally so act then any comment on the intrinsic legality of the plan under execution by competent authority would be improper for, as we shall see, this court would be without jurisdiction to entertain any phase of the case.

Neither counsel for the defendant Chief of Police nor for complainant claim that the Chief of Police or police officers of the city of Los Angeles, as such, have anything but incidental and here unimportant authority outside of the city limits, and counsel for the Chief, undoubtedly right in such contention, cite the City Charter in their argument to the effect that such policemen could not perform the duties assigned to them in such plan under legal claim of authority as Los Angeles policemen. It will be apparent from authorities to be cited that their acts outside of city territory, being unsupported by any legislative or judicial fiat, are not under the color of such authority. No other element of fact need be considered to determine that the action cannot be maintained in this court. The basis for this determination follows.

Complainant depends upon the guarantees of the Fifth and Fourteenth Amendments of the United States Constitution, together with certain statutory requirements, to entitle him to maintain his action in this Federal Court, contending that he has been deprived of his liberty without due process of law and has not been accorded equal protection of the laws. The Fifth Amendment does not afford a Federal court forum for every curtailment of liberty, it merely prohibits such curtailment under the authority of the United States government, except through "due process of law." Each State court maintains its jurisdiction to try the differences between its citizens and both parties here are citizens of California. The State court is open to complainant in this cause unless the state itself (in contemplation of law) is the accused. As to the latter circumstance the Fourteenth Amendment applies, that is, under the Fourteenth Amendment no State shall deprive any person of liberty without due process of law nor deny to any person within its jurisdiction the equal protection of the laws.

Since the activity complained of is not at all that of the United States and therefore does not touch the Fifth Amendment, it follows that the only circumstances that can retain the complainant's suit in Federal court is a showing on the face of the complaint that the defendant is in fact acting under authority, or color of authority, of the State of California (*U. S.* v. *Wheeler*, 254 U. S. 281).

It will be seen by authority to be cited that if the Chief of Police were authorized by any legislative or judicial fiat to proceed to action under this plan, in contemplation of law, his action thereunder would be the action of the state. We have seen, however, that the police action outside of the city boundaries is ultra vires and is unsupported by any legislative or judicial fiat and it therefore follows that neither the state nor its agent is the defendant actually or colorably. The Fourteenth Amendment therefore does not afford complainant a forum for his suit in Federal Court.

There is but one case (*Home Tel. & Tel. Co.* v. *City of Los Angeles*, 227 U. S. 278) cited that casts the slightest doubt upon the theory that acts plainly outside of constituted authority are no more than the acts of private individuals, and the doubt producing expressions have been declared, in several well considered cases, as unnecessary to the decision and District Courts have not followed such dicta. It should be noted that *Ex parte Field*, 5 Blatchford, U. S. 63, cited by complainant, concerns the act of an officer of the United States and not of the State and therefore is not pertinent to the point under discussion.

The late District Judge Martin J. Wade, of Iowa, whose qualities as a great judge were only surpassed by the fineness of his character, after analyzing the Home Tel. & Tel. Co. case (supra) and declaring the novel expressions therein to be dicta, said: "Summing up all decisions it is apparent that it never was the intention that the Fourteenth Amendment should bring before this court (allegedly) unlawful acts by an individual, or by a state officer, except when such acts have their foundation in some express authority of the state, either by legislation, or possibly by judicial misconstruction." (*Berry* vs. *Ringgold County*, 43 Fed. (2nd) 169.) See *Brawner* vs. *Irwin*, 169 Fed. 964, a case relied upon by counsel for defendants, regarding which he comments, "We believe this case is most in point." *Brown* vs. *Mississippi*, U. S. Supreme Court advance sheets, February 17, 1936, and authorities cited therein.

A case in point is *Barney* vs. *City of New York*, 193 U. S. 430. In that case public work was directly under an official board. There was legislative authority for the construction of a tunnel specifically described as to location. It is alleged in the bill of complaint that the Board did not keep within the specific lines provided and the court says: "Jurisdiction of the U. S. Circuit Court was invoked upon the ground that by the tunnel construction sought to be enjoined, complainant was deprived of his property without due process of law, in violation of the Fourteenth Amendment. But that amendment prohibits deprivation by a State, and here the bill alleged that what was done was without authority and illegal, (the same situation in the present case). * * * Controversies over violations of the laws of New York are controversies to be dealt with by the courts of the state. Complainant's grievance was that the law of the state had been broken, and not a grievance inflicted by action of the legislative or judicial department of the state; and the principle is that it is for state courts to remedy acts of the state officers done *without the authority of* or contrary to state law [Italics mine]. *Missouri* vs. *Dockery*, 191 U. S. 165; *Civil Rights Cases*, 109 U. S. 3; *Virginia* vs. *Rives*, 100 U. S. 313."

It may be argued that complainant is not urging the violation of state law, but in effect he is, for there are California statutes legally affecting admission into the state.

See *United Mine Workers, etc.*, vs. *Chafin, et al.*, 286 Fed. 959, a case of striking similarity to the instant case. The court in this case also criticised the *Home Tel. and Tel. Co. case* (supra) much the same as did Judge Wade.

The acts of the Chief of Police, as alleged in this bill and the alleged threats and preparation for further acts under the outlined police plan, being ultra vires in nature and being unsupported by any facts making them the acts of the state, actually or colorably, this court is without any jurisdiction under the Fourteenth Amendment to entertain the cause.

It is perhaps not out of place to say that the great depression, now passing, has wrecked the economic security of many, and this condition being made unendurable by the severity of weather in states easterly of the Pacific coast states, has thrown many persons, both worthy and unworthy, into the equitable climate of California. Many of such persons are without competence, and many are physically incapacitated from supporting themselves if employment were obtainable. These facts unjustly add to the tax burden and the crime problem in the city of Los Angeles and have for such reasons justified the Chief of Police in his own mind, and he is not unsupported by many citizens, in the execution of the preventive plan herein outlined.

No one claims, and the statutes of California would not support them if claims to that effect were made, that every man "down on his uppers" and driven to move on to lands of promise and hope by the storms of the elements and economic forces is necessarily a pauper, a vagabond, or a criminal. But among the moving people it is difficult to distinguish between the well-intentioned, the incapacitated, and the vicious. The police problem is baffling and it is not too much to say that these facts have created an emergency that continues even in the face of material help from the National Government. The Chief Justice of the United States has, however, reminded us in one of his greatest opinions that "emergency does not create power".

No notice need be taken of any other pending motion.

The motion to dismiss is granted.

Exception noted.

March 17th, 1936.

APPENDIX I

SUPREME COURT OF NORTH DAKOTA (1940) 291 N. W. 281

(Appeal from District Court, Adams County; Frank T. Lembke, Judge.)

ADAMS COUNTY *v.* BURLEIGH COUNTY*

BURR, Judge:

The issue as between these two counties is largely one of fact; and a brief reference to the record will disclose the only real issue involved.

The testimony taken at the hearing in this proceeding shows that prior to June 25, 1937, one Hulm, with his wife and ten children, lived in South Dakota; Hulm is paralyzed and unable to do hard labor; he came to Bismarck in April of 1937 to seek employment, and at that time was promised work, told to go back to Perkins county and to come back in two weeks' time; he came back, remained for about six weeks and was told to go back and get his family and bring them to Burleigh county, which he did on June 25, 1937. He lived in Burleigh county from that time until August 29, 1938; Hulm applied for work on W. P. A., was told he was a resident of South Dakota, and, without any order of removal from any court, the family was removed on August 29 by Burleigh county authorities to Adams county in this state; these same authorities then took them over to the office of the welfare board in Lemmon, South Dakota, told this board that they had just brought them over, but the board refused to allow the unloading of the goods, and ordered all back to North Dakota, though the family remained in Lemmon over night; on August 30, 1938, the family were "shipped back to Burleigh county" and the first night there, stopped at the place of the person that drove them to Lemmon with their goods; Hulm went to the courthouse to see the welfare board and the state's attorney, was sent by the secretary of the welfare board of Burleigh county to what was known as Hill Crest Home, where the family was fed and given lodgings; they stayed there for two days, as they were told not to leave until called for; two days later the deputy sheriff of Burleigh county called for him, took him down to the courthouse with his wife, and at that

*Mr. and Mrs. Roy Hulm appeared as witnesses before the Select Committee at its Lincoln hearings, pt. 8, p. 3377.

time he was handed papers (evidently copies of the order of removal issued by the district court of Burleigh county), ordering them to remove to Perkins county and was told if he would not go, he would be taken back; no opportunity was afforded him to get an attorney; they were then returned to Hill Crest Home and told to stay there and get ready to leave for Perkins county (thereafter, by virtue of the order of removal, more particularly set forth hereafter), sheriff Anstrom of Burleigh county, with his deputy, took the family and their goods from Hill Crest Home to North Lemmon in Adams County—the family in a car and their goods in a truck.

The testimony further shows that at the time sheriff Anstrom was attempting to obey the order of the district court to remove the dependents to South Dakota, he telephoned to sheriff Ginter of Adams county, asking him to meet him at North Lemmon on a matter of importance; that the two sheriffs met in accordance with the appointment, and at that time Anstrom stated to Ginter "he had a family there that they wanted to leave for a couple of days" and then Anstrom proceed to find a place to unload their goods, met a young man by the name of Thompson, and through him made an agreement to have the household goods of the dependents stored in a garage belonging to Thompson's mother; that Anstrom left the family in the car, unloaded the goods from the truck, placed the goods in the garage, sent the truck away, padlocked the door of the garage, and handed the key to young Thompson, telling him "to keep the key for a couple of days, and those guys will be likely to move out." Of the goods, two dressers, a bed, and a table were broken and the woman's coat lost. At that time, Roy Hulm asked what he was going to do, as he had nothing to eat, that he was broke; sheriff Anstrom gave him no answer, but "gave him $5.00 and said, 'You can eat on this for a little while; you'll be taken care of a little better later on' "; he further told him "to go across the line and get something to eat". The record further shows that at that time sheriff Anstrom unloaded the dependents from the car, left them standing on the street, just about dark, and started for home with his deputy. When leaving, Anstrom said to Ginter "he had to be going," and "Listen Ginter, we will have to leave these people here a couple of days and whatever you are out you send the amount of it and Burleigh county will take care of it." Ginter protested about leaving the family for relief as Adams county had enough to do to take care of its own needy. No one in North Lemmon would give them even temporary lodgings, and the deputy sheriff of Adams county told them to go to Lemmon and get something to eat. The authorities there immediately ordered them back into North Dakota. It was only when the deputy sheriff undertook to supply their wants that these unfortunates, having no place to go for the night, stayed in a hotel in Lemmon for one night, and for a few days in some cabins, their wants being supplied by Adams county. The deputy sheriff of Adams county ordered some bread and butter for Hulm and his wife and children, and Ginter gave them some flour and oranges and butter; the secretary of the welfare board of Adams county gave them some foodstuff, $1.50 for lunch, and rented a place for them to remain for some time. The authorities of Perkins county served them with an order to leave, and the sheriff of the South Dakota county proceeded to remove them. Being under his care, the deputy sheriff of Adams county, who had some humanitarian instinct, chaperoned them while the sheriff of Perkins county removed them to Adams county. Adams county furnished them a home in Hettinger, and sent down to North Lemmon and retrieved their goods. Ever since the Hulms have been living upon the charity of Adams county.

It is only just to sheriff Anstrom to state that he disputes the statements made to the effect that he promised Adams county would be reimbursed, but as to this issue, the district court of Adams county found the facts as hereinbefore set forth. This finding has ample support in the record, and we see no reason for holding otherwise. They are, therefore, the facts as we find them.

It is the further claim of Burleigh county that during the year's residence in Burleigh county, the Hulms were for a portion of the time supported by Perkins county, South Dakota, under a fraudulent agreement with the Hulms to thus enable them to become citizens of Burleigh county for relief purposes. There is nothing in the testimony taken to substantiate this. It is true that in the copy of the order of removal issued by the district court of Burleigh county, there is a statement to that effect, and this copy is attached to and made a part of the return which Burleigh county made to the order to show cause. Such finding, however, is not binding in this case, so far as Adams county is concerned.

The county of Adams applied to the district court for an order to show cause, directed to the Hulms and to Burleigh county requiring them to show cause why the Hulms should not be returned to Burleigh county, and why the latter county

should not reimburse Adams county for any disbursements it had made on and in behalf of the dependent Hulm and his family.

Burleigh county made a special appearance, objecting to the jurisdiction of the court to issue such an order on the ground that Burleigh county did not concede the residence of the Hulm family to be in Burleigh county, that the order requires Burleigh county to show cause why it should not pay a money judgment to be entered by the court, and that the only method to determine such a matter is through an action commenced by the service of a summons and complaint on Burleigh county. This special appearance was overruled, and in its return to the order to show cause, Burleigh county contends the legal residence of Hulm and his family was not in Burleigh county and that this had been determined by the district court of Burleigh county in a proceeding in which the order to remove Hulm and his family to South Dakota was issued.

It is difficult for the writer of this opinion to pass calmly and dispassionately upon the facts in this case and the law governing the same. One would fain suppress much of the evidence but necessary facts must be set forth. To the credit of the government of this country and the general attitude of our people toward the poor and unfortunate, it may well be said few records show any such callousness toward human beings as this controversy between South Dakota and North Dakota discloses. The case is an illustration of the extent to which "man's inhumanity to man" may be carried. Human beings are shifted around like so much cargo. Somewhere and somehow the well springs of humanity and brotherhood appeared to be dried up. Sick and impoverished creatures against whom there is no indication of crime, laziness, or willfulness, have no place to lay their weary heads, except such as the generosity of Adams county gives them as a mere subsistence in a situation not of its own making, and for which it is not responsible. The callous indifference of South Dakota seems scarcely credible in this age.

But though this may have occurred expense for Burleigh county, that county may not wash its hands of its responsibility by dumping the human freight on to Adams county. If there be any controversy between any of the counties of North Dakota and the state of South Dakota as to responsibility in this matter it is a controversy between Burleigh county and South Dakota.

1. The proof furnished by both counties show that the Hulm family had lived in Burleigh county for over a year. They are in this state and as shown by the decisions of this court *City of Enderlin* v. *Pontiac Township, etc.*, 62 N. D. 165, 242 N. W. 117; *Griggs County, etc.* v. *County of Cass, etc.*, 65 N. D. 608, 260 N. W. 417; *County of Grand Forks* v. *DeFendi et al.*, 66 N. D. 478, 267 N. W. 136; *States of Mercy* v. *Ramsey County, et al.*, 68 N. D. 344, 279 N. W. 759, emergency relief and such other relief as is furnished to them in North Dakota must be furnished by Burleigh county. There is no issue here as to the dependents being residents of Adams county. Insofar as the counties of North Dakota are concerned, even though Burleigh county may have been subjected by the relief authorities of South Dakota to an unjust burden, it cannot pass this on to Adams county. Clearly the officials of Burleigh county recognized this because of the agreement entered into between the two sheriffs for the temporary support of these unfortunate people. The subterfuge sought to be injected here by Burleigh county that the family was taken voluntarily to the north side of the imaginary line existing between South and North Dakota, shoved over into Perkins county, driven back into North Dakota, thereafter returning to Burleigh county, and again being taken by the sheriff to the north side of this imaginary boundary line and left with $5 and instructions to go over and get something to eat, and thereafter, when they returned they were citizens of South Dakota, does not, in any way, shift the burden from Burleigh county to Adams county. One may readily ponder and why the overburdened relief officers of Burleigh county were determined not to undertake obligations not resting upon them; but the primary obligation is there and until those needy people are returned to and received by South Dakota their obligations to the public at large are not discharged. There is no rule of comity between the two states shown to us whereby residence in dispute between the states may be determined. As set forth in the decision cited, the burden of support is placed by the state upon the county and unfortunately for Burleigh county, this is the county of the dependents' residence, so far as the counties of North Dakota are concerned. As between the two counties it is clear that Adams county is entitled to recover from Burleigh county for such sum as was actually and necessarily expended in the support of these people under the agreement made with Burleigh county, and we so decide.

2. On the order to show cause, Burleigh county made a special appearance alleging that the district court of Adams county had no jurisdiction to issue the

order made, as no action had ever been commenced and Burleigh county did not concede the legal residence of the Hulms to be in Burleigh county. It is apparance being overruled, Burleigh county made a return, denying the legal residence of the Hulms was at any time in Burleigh county, alleging that they were voluntarily removed by an employee of Burleigh county welfare board to Perkins county, but thereafter returned to Burleigh county upon the order of the welfare board of Perkins county that the question of their legal residence had been judicially determined by the district court of Burleigh county proceedings instituted against the dependents, and they were found to be residents of Perkins county, South Dakota that an order was made requiring the Hulms to return to Perkins county, and that they voluntarily entered into Perkins county after the execution of said order.

A copy of the order of the district court is attached to the return, and in this it is shown the district court of Burleigh county found that the dependents had been sent to Burleigh county by the authorities of Perkins county upon an agreement between the county and the dependents that Perkins county would support them in Burleigh county; that this was done designedly and intentionally for the purpose of attempting to relieve Perkins county of further liability, and to enable the dependents to acquire residence in Burleigh county. The order then required the sheriff of Burleigh county to forthwith take and convey these dependents "To the state line between North Dakota and South Dakota, at a place nearest the said Perkins county, South Dakota, the place of legal residence of said defendants for relief purposes as aforesaid." The return of the sheriff is attached, showing that he took the dependents to the state line and left them there at North Lemmon in Adams county.

(3) As pointed out in *Nelson County, etc., v. Williams County et al.*, 68 N. D. 56, 276 N. W. 265, the word "residence," when poor relief is concerned, has reference to the place where a person actually lives as distinguished from his domicile.

(4-6) The record here shows that during the month of August, 1938, the county welfare board of Burleigh county furnished emergency relief to the Hulms to the extent of $13.10, but by this time the Hulms had resided in Burleigh county for over a year. *County of Grand Forks v. DuFault et al.*, 66 N. D. 518, 267 N. W. 130, 137, is a case wherein it was claimed that the indigent persons involved were in fact residents of Marshall county, Minnesota. However, they had not received relief from Marshall county for over a year, and during that year, the poor involved had not been in any hospital, poorhouse or other public institution, and: "None received relief from the poor fund of any county, or from the funds provided by the state or by the Federal Government, or had received a mother's pension." It was held they were residents of Grand Forks county, this being the county in which they had lived for a year after their removal from Minnesota.

Brushing aside all technicalities, and attempts at subtle distinctions, the fact remains as shown by the claims of both counties, that insofar as Adams county is concerned, the Hulms resided in Burleigh county for over a year without receiving any support whatever from Burleigh county or any other county in the state of North Dakota, and that the Hulms were forcibly removed from Burleigh county to Adams county, and left there by Burleigh county, under an agreement made by Sheriff Anstrom to pay for their support, and while in the custody of the officers of Burleigh county, expense has been incurred by Adams county for their support. These people are still in the custody of the sheriff. Had the sheriff of Burleigh county, during the time he was removing the Hulms to South Dakota, been required to remain somewhere overnight en route, he would have been required to furnish food and sleeping quarters to the Hulms during that time. Without doubt, the reasonable cost of this service would be a legitimate charge against Burleigh county in his expense account. It is clear, therefore, that Burleigh county is liable to Adams county for the support of this family, and must receive them, unless satisfactory arrangements are made between the counties themselves.

However, the amount of this support cannot be determined on this order to show cause, as it is in dispute; but this proceeding does determine that the liability for actual and necessary relief is that of Burleigh county, and unless the same is satisfactorily settled by the authorities of the two counties, Adams county is at liberty to bring a direct action to recover the full amount shown to be reasonable and necessary.

The order of the district court is modified to the extent of striking out the provisions requiring the payment of $164.73 the determination of this amount to be made later and with this modification the order is affirmed.

NUESSLE, *C. J.*, and CHRISTIANSON, MORRIS, and BURKE, *J. J.*, concur.

APPENDIX J

Excerpt on California Border Patrol from California State Relief Administration, *Transients in California*, San Francisco, 1936 (mimeographed)

I. The Border Patrol

For many years the Los Angeles Police Department has waged war against vagrants and has made it a practice to arrest persons loitering on the streets or in the public parks. There have been instances when social workers in local agencies have had to come to the rescue of law-abiding citizens thus arrested and sentenced to terms in the city jail, and instances where persons who did not speak English were arrested on the public streets as vagrants, even though they had plenty of money, because the policemen thought they looked like vagrants.

With increasing unemployment, the policemen in several of the California cities included in this Survey became more charitable in enforcing laws regarding vagrancy, but the Los Angeles police became more severe. The deputy Chief of Police in 1935 became the chairman of the Los Angeles Committee on Indigent Alien Transients. The following definition for "alien transient" was used by the Committee: "Indigent alien transient is defined as being a transient entering the State of California without visible means of support and whose legal residence is foreign to the State of California."

The Committee on Indigent Alien Transients on November 4, 1935, submitted to a group of citizens it called together, a report reviewing the situation in regard to the policy of the Federal Government, the railroads, and the State Relief Administration, and made a series of recommendations to "apply to the cases of male, unattached, adult, indigent, alien, employable transients." They stated that they considered that other transients were presenting no immediate problem.

The following were the recommendations:

"1. The establishment, by the Health Department of the State of California, of State Border Quarantine Stations for the examination of those having communicable diseases or coming from areas where epidemics are prevalent. The solicitation for this project to be made through the Los Angeles City and County Health Departments.

"2. Peace Officer Stations to be similarly situated at the points of ingress to the State for the purpose of arresting those persons guilty of violations of sections 587C and 647 P. C.: Pauper Act (Statutes of 1933, page 2005, chapter 761, sec. 12); Vehicle Code, and the Motor Caravan Act (Stat. 1935, chap. 402). Such action to be a State action, and solicitation to be made through

(*a*) The Governor;
(*b*) Mr. Jeutter, Chairman of State Relief;
(*c*) The Attorney General;
(*d*) The Director of the State Motor Vehicle Department.

"3. The establishment of camps with means of subsistence, and a very nominal wage, for employable transients who state their willingness to take advantage of such camps. The administration of camps to be

(*a*) Preferably by the State Relief Administration;
(*b*) Secondly, by the Department of County Charities, County of Los Angeles; or
(*c*) By some local agency other than a law enforcement agency;
(*d*) That all persons applying for work in these camps be required to submit to fingerprinting, copies of which shall be furnished the local law enforcement agencies of the jurisdiction in which the camp is located;
(*e*) That the compensation be applied to the purchase of a railroad ticket to the transient's place of legal residence;
(*f*) That in connection with the work program, adequate insurance under the State Act be procured by the agency responsible therefor;
(*g*) That close cooperation be maintained between administration of the camps and the law enforcement agencies so that the latter may be informed of the discharge of any of the subjects from any of the camps.

"4. The establishment of vagrancy penal camps for those sentenced under penal provisions to be operated as follows:

(*a*) The administration of such to be by the local law enforcement agency, financed by the local jurisdiction, and the work to be performed upon public projects.

(b) Those working under this program to be employed upon parks, roads, etc., and that such work be administered by the agency having supervision over the property being improved.

"5. The policing of the common carriers and main arterial highways or other means of ingress into the State of California.

(a) That the railroads be contacted to cease the practice of transporting transients.

(b) That assistance to the railroads by our law enforcement agencies be offered in the policing of the trains within the borders of California.

(c) That the Department of Justice or the Federal Attorney General's office be solicited to cooperate with the State and local law-enforcement agencies in preventing indigent transients from entering the State of California on common carriers.

(d) That the same agencies be solicited in the policing of the Federal highways for the same purposes.

"6. That publicity be given of a type that will serve as a deterrent to alien transients.

"7. That the Governor of California be advised of the tentative plan of the several agencies treating with this program in the city and county of Los Angeles and that it be recommended to the Governor that the executives of the adjacent States to California be asked to cooperate with the agencies of California and its many political subdivisions in the execution of the plans heretofore mentioned, and to formulate a compact agreement between the several states to take care of the situation in the future.

"8. That a major committee to cope with the problem be formed and to consist of representatives of the following agencies or offices, to wit:

"GENERAL COMMITTEE

"*Federal*.—Department of Justice, Federal district attorney, United States marshal.

"*State*.—Assistant State director of transient activities, attorney general, California State Chamber of Commerce, chief of social records division of the L. A. C. R. A., director of L. A. C. R. A., director of motor vehicles, Governor, State director of finance, State director of transient service, State health department, State relief administrator and Work Projects Administration director, superintendent of the State bureau of criminal investigation.

"*County*.—Board of supervisors, county auditor, county counsel, county health department, department of charities, director of the district No. 11, Work Projects Administration, district attorney, public defender, sheriff's department, superintendent Los Angeles County Road Department.

"*City*.—City attorney, city council, city engineer, city health department, department of public works, mayor, Municipal court, park commission, police department, public defender.

"*Other agencies*.—California Association of District Attorneys, California League of Municipality, California Taxpayers' Association, community chest, Council of Social Agencies, Los Angeles Chamber of Commerce, major veterans' organization, Merchants' Manufacturing Association, organized labor, Peace Officers' Association of the State of California, railroads, Sheriff and Undersheriff's Association Southern California Economic Council.

Respectfully submitted.

HOMER B. CROSS, *Chairman*.
NEWTON KENDALL, *Member*.
LAWRENCE SCHREIBER, *Member*.
JOHN O'CONOR, *Member*.
WM. BRIGHT, *Member*.
M. D. BENESH, *Member*."

Since the State departments mentioned did not carry out these recommendations, the Los Angeles Police Department itself decided to bar the State of California to transients without funds. The deputy chief of police made contacts with the various railroad companies in an attempt to secure their cooperation. The railroad officials agreed that representatives of the Los Angeles Police Department might search the freight trains as they crossed the border into California. Contacts were also made with the sheriffs of the counties on the border of the State and the request made that the Los Angeles officers be deputized as sheriffs

of these counties. In Siskiyou, Nevada, and Riverside Counties they were deputized. Del Norte, Modoc, Plumas, and San Bernardino Counties refused to deputize them, but Los Angeles nevertheless sent officers to these counties.

On the third of February, a total of 125 Los Angeles police officers on the pay roll of the city of Los Angeles were sent out to the border points where transients might be entering the State by railroad or highway. Since California has the Pacific Ocean on the west, and Mexico on the south, most of the transients could come in only from the east or the north. Along a large part of the border, the extremely mountainous country and the deserts limited the points of entry to a comparatively few places, and 16 of these were covered by the Los Angeles police. Map C shows these points.

One lieutenant was in command of the northern area and had headquarters at Yreka in Siskiyou County. Under him were 3 squads, consisting in all of 9 sergeants and 36 officers, in charge of the work in Del Norte, Siskiyou, and Modoc Counties. In Del Norte County, a sergeant with 6 officers under him was stationed on U. S. Highway No. 101, leading down the coast from Oregon. Another squad was stationed on U. S. Highway No. 199, the road from Grant's Pass, Oreg., which meets the Redwood Highway, U. S. No. 101, near Crescent City. There is no railroad in Del Norte County.

The officers in Del Norte County were visited by a member of the survey staff in the middle of February, when there was little highway traffic due to the extremely heavy rains. The lieutenant in command had gone fishing, but sergeants and officers were interviewed. They were living in a beautiful spot in the midst of the redwood forest through which tumble some of the best salmon trout streams. Their quarters were artistic, well-furnished log cabins, which are part of a fine resort in the summertime. The woman in charge of the resort was preparing their meals. The men were working on 8-hour shifts. Two officers were on duty in an abandoned auto camp at the border, close to the plant-quarantine station on Highway 199. These men said they were not stopping any cars but only watching for persons on foot. In the wintertime few persons would travel by foot over that highway, since it was many miles between towns or any sort of habitation. The officers stated that in a 10-day period they had stopped three boys, all of whom were allowed to proceed on their way after it was found that they were going to their parents or to a job. The men at the plant-quarantine station and the officers of the State highway patrol corroborated the statement of the officers on duty that automobiles were not being stopped.

The officers on duty were practicing marksmanship. The people of Del Norte County were so unfriendly to the officers that they did not care to spend their off hours in Crescent City. The officers said that although they were not deputized as sheriffs in the county, they had a right to arrest anyone they wished, and quoted the common law that anyone may arrest a person whom he believes to be committing a crime. They were not clear as to what crimes any entering transient might be committing on the highway, but thought they might pick up a criminal. They believed the mere fact that they were stationed on the highways would keep criminals out of the State.

In Siskiyou County squads consisting of a sergeant with six officers were located at Hornbrook and Dorris. At both of these points the officers were covering not only the highways but the railroad. The Southern Pacific carries all of the traffic from Oregon into California through one or the other of these two points. A member of the survey staff visited the group at Hornbrook. Here the officers were living in a comfortable auto camp. The Los Angeles officials had made a contract so that the men received both room and meals. Two officers were living in each two-room cabin. Hornbrook is about nine miles south of the Oregon border, but is the first railway stop and the first town on the highway. There was considerable snow on the highway over the mountains north of Hornbrook and little traffic.

Although two officers were nominally on duty, they were found inside their cabin before a roaring fire, writing letters, because it was raining so hard that no one was likely to go along the highway. They announced that they were stopping no cars, trucks, or busses and were questioning no women. At the time of the visit they had been 9 days at the station, but had not seen anyone walk along the highway. There were only one passenger train and one freight train in each 24 hours, going south through Hornbrook. These were being searched. The officers told the worker they had stopped and questioned 31 men who were riding on the freights. Half of these had convinced the officers that they belonged in California or had definite business there, the others had been encouraged to take the next freight north. The officers stated that on the previous day they had questioned one man and forced him to admit that he had once served a 1-year

sentence in the penitentiary at Walla Walla. He had no job at the present time but was trying to find work. He had a bundle in which were some new shoes which he said had been given to him, but the officers arrested him on suspicion of burglary. They told the worker of the Survey that this man had been taken to the county jail, but at the jail the sheriff of the county reported that no one had been brought there. When the worker visited the old hotel building in Hornbrook where the officers had been fingerprinting suspects, the door was found locked.

The officers boasted that they knew how to make men tell the truth and that if they suspected a man of having a record, in 80 percent of the cases they were right. They considered anyone to have had a record if they succeeded in making the person admit having been arrested on any charge, or ever having spent a night in jail. They stated that after they made fingerprints it was at least 48 hours before they could secure a report back from Los Angeles or Washington, to which points fingerprints were sent, and obviously they could not hold all the men they suspected until reports were received. With the exception of the one man whom they had arrested, they could not tell of any definite contacts with persons with criminal records. A statement, however, had appeared in the newspapers and was being quoted in Yreka, where the officers had succeeded in making friends, that seven desperate criminals had been caught. The officers insisted that the stories that had been published about an old man who was injured by being forced to board a northern bound moving train and about a mistreated bus passenger, were untrue. The station agent at Hornbrook reported that he had observed no mistreatment of railway passengers. Other persons in the town and the State Highway Patrol officers told the worker that busses were not being stopped.

Because of the extremely bad weather the division in Modoc County was not visited, but the officers in Siskiyou County reported that they had learned by telephone that up to the middle of February no one whatever had been stopped in Modoc County, where one officer was in command. One squad with a sergeant and six officers was located at Stronghold; another squad with a sergeant and six officers was located at Alturas. The sheriff of Modoc County refused to deputize these officers and after a period of several weeks succeeded in having them withdrawn from the county.

The central area detail, with headquarters in Truckee, was in command of a lieutenant. Six sergeants and 33 officers were working under him. Men were stationed at Portola in Plumas County; Reno Junction in Lassen County; Truckee in Nevada County; Bridgeport in Mono County; and Bishop in Inyo County. There was no squad on U. S. Highway No. 50, south of Lake Tahoe, as the road was closed for the season by heavy snow.

The officers in Nevada County had been deputized by the local sheriff. Two men were at Hirschdale, a small resort just inside the California State line on the Donner Pass Highway. No cars were being stopped as far as the worker from the survey staff, who visited the station in the middle of February, could determine. The officers announced that they stopped persons walking along the highway. As there were many feet of snow and the highway was closed even to motor traffic at least half of the time, no persons were walking along the highway. The men at Truckee were searching all west-bound freight trains. These were boarded by the Los Angeles policemen when the trains stopped in the yards about a mile below the station. Officers boarded each end of the train, the two crews working toward each other thoroughly examining the corridors, empty cars, trucks and underframes, the gondolas, doors, and ice hatches. Some of the officers walked along the ground, others on top of the cars. In a 10-day period only 6 persons had been stopped. Four of these had proved California residence; the others had been made to board east-bound trains. While the worker from the survey was with the officers, one man with no documentary proof of residence was allowed to enter when he showed familiarity with certain California landmarks, but another who had a California chauffeur's license was turned back when it was found that he was not familiar with the State. The man admitted that some other transient had given him the license. The officers were making use of the law which makes it illegal to evade railway fares, and stated that it was under that law that they were able to make arrests. Half the persons whom they decided should not enter California were practically forced to break this same law by boarding an east-bound freight train.

The men on duty in Plumas County had not been deputized by the sheriff. Two men were stationed at Hallelujah Junction, the intersection of the Feather River Highway and the Reno-Susanville Road. No traffic had been stopped at this point. The detail at Portola was searching the Western Pacific west bound trains. In the first 10 days, 34 persons had been stopped, and all of them finger-

printed; 17 had been turned back. This railroad was said to be more popular than the Southern Pacific with the trespassers in the wintertime because the Southern Pacific went over the mountains at 2,000 feet higher altitude and there were more likely to be severe storms. Although few men were entering California from Nevada it was found that at least 350 transients were living in the jungles of Reno, just over the border in Nevada.

When inquiries were first made at Independence in Inyo County no one seemed to know anything about the border patrol. The sheriff at Independence and the public officials at Bishop stated that they had never heard of the patrol. These communities are extremely hostile toward the city of Los Angeles because the Los Angeles city water supply is drawn from the Owens Valley in this section of the State, and the district consequently reduced to desert. In the many lawsuits concerning these water rights the local landowners have always lost. It was found that two squads of Los Angeles policemen were working in this area, one watching the road which comes from Carson City, Nev., into Bishop, and the other on the highway from Tonopah, Nev., through Benton, Calif. The road from Tonopah was closed on the day the survey worker visited the district, February 23, because of the extreme cold and heavy snow farther east and north, and the highway from Carson City was expected to be closed for several more days. The narrow-gage railroad from Nevada into Bishop had few trains, which ran irregularly. The officers were not finding anyone to stop and some of the men had been withdrawn. One little known railroad around Death Valley was not being covered.

The southern area detail was in charge of a lieutenant with headquarters in San Bernardino. Six sergeants and 32 officers worked under him. In this division there were squads at Cadiz, Wheaton, and Kelso in San Bernardino County, at Blythe in Riverside County, and at Winterhaven in Imperial County. San Bernardino County had not deputized the officers but Riverside County had done so.

Cadiz is not a town or a community but just a railroad station in the desert on the main line of the Santa Fe Railroad which comes from Arizona into California at Needles. All trains, whether passenger or freight, stop at Cadiz for oil and water. There are about 12 west-bound trains each day. The trains do not stop between Cadiz and Needles. When the worker from the survey visited this point early in February it was found that the officers were living at a cottage camp at Chambless, on highway 66, about 3 miles from Cadiz. As on the Oregon border, the officers on duty spent a good deal of their time trying to improve their marksmanship. The officers announced that they had turned back 25 transients in 7 days. They told of making one aged colored man, who had recently been released from Folsom, board an east-bound train. He got off the train on the desert and tried to circle around to get headed back into California. They caught him and walked him into the desert until "his feet were so tender he could stop on a dime and call it heads or tails." He was again put on an east-bound train.

The officers at this point claimed that they had not yet arrested anyone and that if they did so it would be necessary for them to take the person to Ludlow, the nearest jail, 45 miles away. They stated that they watched U. S. Highway No. 66 for hitchhikers, and a few days before had driven two boys down the highway to the tracks so they would catch an east-bound train. According to their account they had not turned any automobile back. The officers were searching each west-bound train, but on most of them were finding no passengers. The conductor on one train told the worker on the survey that the men were getting off at Needles, which was so full of transient men that 15 or 20 were begging at his home there every day.

Since there had been extremely heavy snow in Nevada and Utah, few trespassers were on the trains coming in through Kelso and there was little traffic through Wheaton. Kelso is a Union Pacific town in the midst of the Mojave Desert. It consists of about a dozen buildings inhabited by railway employees. The Los Angeles police officers on duty at Kelso were living in the small railway hotel. Wheaton Springs is on the main highway connecting Las Vegas, Nev., with the coast, but it consists only of a gasoline station and some cabins. The officers at this point were proceeding with caution, due to the fact that they had not been deputized as sheriffs in San Bernardino County. They stated that it was 125 miles from there to any jail, but they had arrested no one so far. This station was not being covered at night, and by the time it was visited by a member of the survey staff on February 21, only four officers were remaining at this point.

There were rumors that large numbers of men were camped in the jungles of Las Vegas, waiting a chance to get across the line into California. The survey worker who visited Las Vegas estimated that there were at least 700 unattached men in the town of Las Vegas, but only a few of these were living in the jungles. More of them were spending their nights in the gambling houses where they were allowed to sleep on chairs until 6 a. m. Many of the men told the survey worker that they were planning to enter California in trucks, one or two at a time, pretending to be helpers to the regular drivers. There are long stretches of the State border far from main roads. One of the men in the Las Vegas jungles said, "If the pioneers could get through without roads, we can get into California if we want to."

About 4 miles from Blythe the officers were stationed in what had formerly been a cold-drink stand about 15 feet from the plant quarantine station at the border. The officers were stopping cars, making no search if they were expensive cars, but explaining to the drivers that it was illegal in the State of California to carry firearms without a permit. Many people turned over their firearms to them. The officers examined the passengers to see if any of them looked like hitchhikers who had been picked up. Dilapidated-looking cars were being turned back. The officers at this point reported that in the first week they had turned back 40 cars but the number had decreased since then and by the third week, at which time this point was visited by members of the survey staff, they were turning back only one or two a day.

The officers related the story of three girls traveling in a truck with three men. The men were afraid to try to get them through the patrol. The girls had gotten out of the truck and tried to sneak around the policemen, but they had caught them. The officers decided that two of the girls were experienced prostitutes but the other was a 15-year-old runaway from Texas. This young girl they were holding and hoped to arrange her return to her parents.

Highways 60 and 70 from Arizona were said to have the largest amount of traffic in February, and all automobiles had to stop for a series of inspections. The State motor vehicle department checked regarding automobile licenses. The inspection of the State department of agriculture included examination of camping equipment, blankets, etc., to see if any insects detrimental to California agriculture might be present. The United States Immigration Department checked at this point to see if aliens were entering. The Los Angeles patrol became the fourth check.

When the worker visited this station near Blythe early in February, representatives of the Paramount News were taking moving pictures of the border patrol, and the officers said that the Metrotone News had taken pictures a few days previously. The officers at this point were interested in securing publicity so that undesirables might stay away from California. They said that they were being careful not to offend anyone who might be rich or have political influence.

Up to February 11 the officers reported that they had turned back only three families. Since the officers at this point were deputized by the Riverside County sheriff they were not afraid of making arrests. The officers talked with the people in the different cars and advised those who did not look like wealthy tourists that it would be better for them to turn around since there was no employment in California even for the residents of the State. They talked to all of the bus passengers, advising them to write East to their friends, telling them not to try to hitchhike into the State or even come in their own automobiles unless they had plenty of money. They were taking revolvers from persons in automobiles, telling them they were violating the State law about carrying concealed weapons, and the officers were suggesting that these persons write back home to tell their friends how strict laws were in California. The worker heard one boy thus deprived of his revolver, tell the officers he "sure would."

The officers claimed that they were taking fingerprints of all persons they turned back, with the exception of women and children under 18. Fingerprints were also taken of each person who had a concealed weapon. The officers were using a questionnaire form of interview for all of these persons. From February 3 up to 11 a. m. on February 11, the chart kept by the officers stationed at Blythe recorded that 44 persons had been fingerprinted. The officers said that in the first few days; when they had turned back 200 undesirables, they had not been equipped to take their fingerprints.

While the worker on the survey observed the officers at work, about half of the automobiles were allowed to pass without any inspection. A beautiful new Packard sedan with four passengers was signaled to pass, the officer turning to the

worker, remarking, "You see, there's really nothing to do in that case. We would make enemies if we stopped people like that." Other fine cars, however, were stopped while the drivers were told of the law about weapons. The decision to stop cars appeared to be based upon the convenience of parking, the mood of the officer, the number of cars in line and the presence of the sergeant. An officer signaled to the side of the road an old model car in which the occupants did not appear needy, and began a conversation. "Hello, it is my duty as an officer to inform you regarding the law on concealed weapons," and then explained that the penalty for violation of the law was 6 months in jail or a $500 fine.

The approach varied according to the individual officer, but it was always courteous and convincing. Without waiting to hear the penalty, one man gave up his automatic. Three revolvers were confiscated while the survey worker was there. One man was allowed to pass with his automatic without being fingerprinted when he produced evidence permitting him to carry it. A couple with a small baby in a new 1935 Oldsmobile sedan turned over a new revolver, which the man had just purchased for $20. The officer explained that on receipt of permission to carry a gun from his local sheriff in Maine he could send to Riverside for his weapon. A discussion of firearms led to other questions, and an interview sometimes went on for 10 minutes, necessitating a conference of two officers before the car was allowed to proceed. One officer said that the people did not mind being questioned, except when they were asked about their finances. Bank books and canceled checks were sometimes requested as evidence of financial security.

Two young hitchhikers slowly trudging their way east, stepping as though their feet were sore and their backs tired from carrying a suitcase and a bundle, caught the eye of an officer. "Keep right on going—don't stop," was the parting farewell shouted at them by the police as they crossed the Colorado River bridge into Arizona.

A 1927 Pontiac sedan, laboring under the weight of five passengers, a pile of cartons filled with food, dishes, and old clothing, and extra luggage tied on the running board, halted for inspection. Two flat tires with an inner tube half out were strapped on the back as spares. Old tools, a jack, pliers, and a wrecking bar, which the officer inspected closely as possible "concealed weapons," were strewn on the floor, partially covered by old, soiled blankets and overcoats. All the passengers, two young girls, a young boy, and two middle-aged men, wore dirty clothes spotted with oil and grease. The driver, the most slovenly of all, even had his shoes unlaced, as he "felt more at home" that way. He said he operated a dray line in a certain town in Ohio and had sufficient money for the group and could wire for more. His brother-in-law, two nieces, and the young bridegroom of one of the girls were "really on a honeymoon for the young couple" and might spend only 2 days in California, traveling then to Nevada. After they left, the officer remarked, "We should have turned them back but we can't quite do it."

Shortly after the departure of the Pontiac, a 1929 Ford roadster, dripping water and oil, with a home-made trailer attached, came to a stop under the canopy. A 1935 New Mexico license, battered and covered with dust, revealed the State of origin. When the regular inspection was completed, the police beckoned them to halt. The old car, lacking paint in spots, spattered with oil-soaked dust, and probably not washed for a year or so, was equipped, like the trailer, with new tires. The worker counted the occupants twice to make certain that the family totaled nine. The little one-seated car was crowded with the father, a 16-year-old son, a 3-year-old boy, and the mother with a year-old daughter on her lap—all jammed in the seat. The cover to the baggage compartment had been ripped out and converted into a rumble seat for the three daughters, 5, 12, and 14. The oldest boy, 18, sat alone in the middle of the trailer. Heaped around him were what appeared to be all the worldly possessions the family owned. A white canvas covering hid from view all but a coffee pot, a tea kettle, a lantern, and the barrels of a .22-calibre rifle and a 12-gage gun. The trailer, about 8 feet long, mounted on two wheels, was still new, and the lumber showed little sign of road wear or hard weather.

A check with the police revealed that the family were coming to California for the first time, to see the wife's sister. They had $30 in cash. The two officers working jointly on this case, advised the family of the difficulty in securing employment and told of the thousands already on relief in Los Angeles. The captain of the highway patrol happened to be present, and he informed the travelers that

it would cost $20 to clear the licenses on the car and trailer. The family had little to say, so the policeman remarked as he ceased the attack, "Think it over—make yourself at home." For 10 minutes or so the scene was tense. The mother, clothed in a well-worn spring coat, clutched her baby girl to her as she broke out in sobs. The two oldest girls, wearing only light cotton dresses, shed a few tears. The 5-year-old sister jumped around, not knowing what it was all about. The boys sat quietly, staring into space, waiting for their parents to decide. The police continued their attack, but this was too much for the father and mother. "If only," she said, "I could see her (the sister)—I don't care so much if we can't stay here." The father, unshaven and unwashed, with a ring of tobacco juice around his lips, silently crowded the others over and took his place behind the wheel. The battery was low and the motor did not respond, but when it did it sounded as if it, too, was "undesirable" and in need of assistance. With a weak threat to call his brother-in-law and have him come to Arizona and take them across the line into California, he turned the Ford around, and the family of nine from general delivery, ———, N. Mex., went back over the road they had traveled about an hour before, having denied the police the privilege of fingerprinting them as "not wanted in California."

The police squad on duty near Winterhaven, just across the bridge from Yuma, Ariz., had added two extra officers just before the place was visited by a worker from the survey on February 11. The officers were using a part of the quarantine station of the State department of agriculture as an office. A few days later they were asked to move out, and then used the dilapidated Winterhaven jail as headquarters. The police officers were living in the hotel at Yuma and seemed to have made friends with the townspeople there. The officers described a man in Navy uniform who had been detained on a previous day because of different names on letters in his pocket and on the liberty card from a United States destroyer at San Diego, which he carried. A Mexican traveling with him said he was not a real sailor. The Mexican was held for deportation. The man in uniform was sentenced to 7 days in the Winterhaven jail, which he was forced to clean. In the meantime his fingerprints were sent to Los Angeles to determine if he had a criminal record. Another man who had been found to have burglary tools in his possession when he was taken off a freight was also confined in the Winterhaven jail.

While the worker watched, about eight or nine hitchhikers were counted but allowed to proceed into California. Why this number were allowed to enter was not clear to the survey worker. A train bound for a short trip into Mexico before continuing on into California had no trespassers. It was stated that the Mexican officials were so rough with trespassers that few attempted to ride.

On another train were five trespassers. A Mexican girl of 16 and a Mexican boy of 19 were detained by the officers while the others were allowed to proceed. The girl was short, dark, stocky, and dirty. She wore a soiled house dress and long, grimy tweed coat. Her black, unkempt hair hung in wisps to her shoulders. She remained apathetic during a half hour of questioning by the police, and answered rather sulkily. The boy was dark, thin, and somewhat stooped. He was well dressed and clean. Both were spoken to separately by the policeman, who was patient, kindly, and intelligent. The couple left El Paso Sunday night after the girl had had a quarrel with her mother. (This was Tuesday and El Paso is 725 miles from the California border.) She said there were five children in her family. The father was unemployed, but the mother and one of the boys were working and able to care for the family's needs. The girl had completed 2 years of high school. She was en route to Los Angeles to her cousin who was working in a factory, and she was certain she would have no difficulty in finding work too. This was the first time she had left home and she was not aware there was anything wrong in traveling across the State line with a man. When they left El Paso they had more than a dollar between them and they still had 30 cents. They said they were not hungry and they carried a pint jar of peanut butter, so that their money would not give out too quickly. They were held more than an hour before several policemen, after consultation, decided to release them after fingerprinting the boy. They were warned that they were to return to El Paso immediately or they would both be sent to jail. They were escorted to the Arizona State line and watched until they had disappeared down the road.

On February 13 a worker reported that a few hitchhikers attempted to cross the border. Some of them were able to convince the officers that they had a right to do so. One family of nine, with a dog, traveling in two trucks, was de-

aved several hours by the officers but finally allowed to proceed since they had plans, some money, and expectation of work in Kern County.

The police looked over the passengers of a Los Angeles Gray Line bus when it stopped for the baggage inspection at the agriculture quarantine station. The police asked the driver whether any of the passengers were taking a short ride. This would have placed them under suspicion for paying fare from the nearest point in Arizona to the nearest one in California in order to evade the patrol. There were no short-ride passengers, according to the bus driver.

In the evening the special assistant to the deputy chief of police arrived to make an inspection of this territory. The lieutenant in charge of the southern division, and the sergeant in charge of this station and four officers of the detail, a deputy sheriff and a railway detective, made up the inspection party. A freight was due at 6 p. m. but actually arrived at 7.

As the powerful freight crept by, the engineer waved and the train came almost to a standstill traveling at a rate not exceeding 5 miles an hour. It was a very impressive sight. Darkness had just settled, and the detail was equipped with powerful flashlights. As the train passed the central point, the officers began their search. Several jumped on the front of the train, others waited until approximately half of the 75 cars had gone by, and then boarded. In the meantime, several additional officers stationed farther down the track boarded the rear end. The train picked up speed slightly and proceeded onward, still however, very much in leash; it did not exceed 15 miles an hour. As the last car reached the inspection station there was a crunching of brakes and the train came to a standstill. The cordon of officers returned to the central point.

The raid had netted them two dirty, tired, lone individuals, obviously affected by the cold and fear. One, a Mexican, spoke very little English. He stated that he was born in Texas, and had lived most of his life in San Antonio. He had finished the fourth grade in school. A complete search revealed only a few matches, a tortilla, and a piece of cord. He was unable to explain why he was coming into California, and in fact it was only with the greatest difficulty that he could make the police understand his name and former residence. He was offered no opportunity to decide whether he wished to risk jail or return, but one of the officers took him by the arm, stating, "Let's take a walk, buddy," and they disappeared in the darkness toward the bridge that separates Yuma, Ariz., and California.

The other man soon gained self-possession. He stated simply that he was a seaman, had shipped from San Francisco to New York and was en route to San Francisco to ship again. He showed his discharge papers, and as the evidence offered was satisfactory he was not molested any further but was permitted to reboard the train. From somewhere in the darkness emerged two additional figures. One man was en route to San Pedro to reenlist in the Navy; the other was a young boy, probably 17 or 18, who had left Long Beach that morning intending to take a trip East, but had changed his mind and now wished to return. These men spoke to the sergeant and were told to get on the train. During all of this questioning and searching, the train had not moved.

As soon as the Los Angeles police sent men out to the 16 locations near the State line, the border patrol received a great deal of publicity in the newspapers. According to newspaper accounts there were protests from such organizations as the Civil Liberties Union and the American Association of Social Workers, from the Governor of Nevada, the attorney generals of Arizona and Oregon, the City Commission of Phoenix, Ariz., the officials of Portland, Klamath Falls, Grant's Pass, and Roseburg, Oreg., the chief of the California Highway Patrol, and many private individuals. Two members of the California Senate were stopped and subjected to questioning by the officers at Blythe. Eastern newspapers and magazines ridiculed the State for allowing such a thing to happen. The newspapers of Northern and Central California were bitter regarding the power of a southern California city. Local taxpayers in Los Angeles protested the expense of maintaining 125 men hundreds of miles outside of Los Angeles City, in addition to paying their traveling expenses and salaries. The chief of police claimed that he was protecting the city from an influx of criminals, and stated that 65 percent of those stopped had criminal records. He admitted to a member of the survey staff that he considered anyone to have a criminal record if he had ever been arrested for vagrancy or spent a night in jail. He was not willing to allow a worker from the survey to examine the information in his office regarding the patrol.

The attorney general of California, in a reply to a request from the Los Angeles Chamber of Commerce for endorsement of the blockade, stated that the police of

Los Angeles had "no jurisdiction beyond the city's territorial limits * * *. Under provisions of the political code of this State no person is eligible to the position of a deputy sheriff in one of the counties of this State, except he be an elector of such county * * * As between the States, the right of citizens to ingress and egress has very generally been recognized and upheld * * *. Government no more than the individual can justify the reaching of even proper ends through unlawful means." The entire letter is included in appendix B.

Among the persons stopped by the police was John Langan, a resident of California who had been in Arizona on business and was returning to his home on February 10. He sued James E. Davis, as chief of police of the city of Los Angeles, in the Federal court, asking that Chief Davis be enjoined from: "stopping, molesting, questioning, fingerprinting, arresting, or otherwise interfering with plaintiff entering California, or with plaintiff traveling in California, or with plaintiff traveling between any of the States bordering on California." The complaint states that Mr. Langan "was stopped, taken in custody, molested, questioned, and threatened ejection from the State unless he did then and there prove to the policemen's satisfaction that he was not a resident of another State and was not an undesirable citizen. Mr. Langan was, at the time, in pursuit of his lawful business, which frequently calls him across the State lines of California, had committed no crime nor was he accused thereof, and the officers possessed no warrant for his arrest. Langan claims that he was thereby deprived of his constitutional rights as guaranteed by the fifth and fourteenth amendments to the Constitution of the United States. He also claims that he has suffered a money loss of $5,000."

The case was heard in the central division of the Southern California District Court of the United States on March 17, Judge Stevens presiding. The judge decided that the fifth amendment to the Constitution, which states that no one may be deprived of liberty without due process of law, did not apply. The State courts have jurisdiction regarding differences between its citizens, and in this case both parties, that is both Mr. Langan and Chief Davis, were citizens of California. The case would therefore have to be heard in the State court unless the State was accused. In this case the State was not accused, but an individual. The officers detaining Mr. Langan, according to the judge, were not acting as Los Angeles policemen but as deputy sheriffs of Riverside County.

The fourteenth amendment to the Constitution, which states that no State may deprive one of liberty or deny the equal protection of the laws to its citizens, could not apply because the complaint was not directed against the State and Chief Davis was not acting under authority of the State. The case was therefore dismissed.

Newspapers reported that in addition to the border patrol the police officers were searching the rooming houses in Los Angeles, dragging persons from their beds and telling them they must leave town. No evidence was found by workers on the survey to support this. However, it was found that the police were sending into other States many persons who had already entered the State of California.

A worker on the survey was in the desert town of Indio on February 10. The Journal of a Transient records: "I learned that a freight was pulling out for Yuma, at 7:30 that night, and was waiting in the yards for it when it came in. When the train stopped a Los Angeles police automobile pulled up near the caboose and unloaded boxes of sandwiches. The doors of the last two boxcars were opened and 100 or 150 boys and young men hopped out and lined up to be fed. Two Los Angeles policemen were in the cars in charge of the mob. Most of these boys had been taken out of Lincoln Heights jail, and put on the train under supervision of Los Angeles authorities. A few had been picked up along the way, they said. There was much joking among the boys and the policemen about their "pullman ride" home to Texas or Oklahoma. I saw one boy in the crowd to whom I had talked in the Los Angeles jail. He had told the police he was from Phoenix, but had told me his family lived in Portland. He was an overgrown 16-year-old runaway. I saw 50 or 75 more riders as I walked up the track beside the train, and when it started to pull out, I got on a flat car with 15 other boys and men. On this car were 3 Ohio boys of high-school age, traveling together, who had ridden this same train all the way from the Oregon border. In that distance all the food they had eaten was two loaves of dry bread which they had bummed while the train was stopped in Bakersfield. In Colton one of them had bummed about 10 pounds of dry beans. These they expected to cook in the Yuma jungles when they got out of reach of the 'tough California bulls.' All the way from Indio to Yuma

they talked of the big 'bean banquet' they would have. It was too cold to sleep on the flat car, and we all huddled together to keep warm. The three boys from Ohio amused themselves by swapping shady stories and singing popular songs. Their use of English and their conversations in general indicated good educational backgrounds, and some of the stories they told were too subtle for most of the men to catch.

"The train rolled across the Colorado River bridge at midnight, and as it slowed down going into the Yuma yards, I counted 19 Los Angeles and Yuma policemen lined up along the track to greet the new arrivals. Several of them boarded the train before it stopped and took charge of all the bums who were riding. As one of the Yuma cops hopped on our flat car he swept the crowd with his flashlight, counted them, and said: 'Now you birds stay on this train, and if any of you try to get off here we'll burn your goddamned tails till hell won't have you.' He went on to say that this was a through freight and we were all going to be held on it across the State of Arizona. One of the three boys with the beans told the policeman that they were about to starve and would like to stop long enough to 'cook up.' He asked if they couldn't be put in jail and fed. 'Hell, no,' the cop answered, 'didn't I just tell you not to get off this train?'

"When the train stopped, we were lined up along the track with 10 or 12 other men and searched by 2 cops. We were then marched back to the cars where the kids were locked in and told to get in with the others. At the rear of the train we were met by an officer in a khaki-colored uniform who was addressed by the cops as 'chief.' I approached him and told him that I was a California resident and had ridden into Yuma by mistake, thinking that this train came by El Centro where I had a job. He asked me if I had any identification, and I showed him a California driver's license. He told me to 'get the hell back to California then,' and he sent one of the cops with me to escort me across the bridge and to see that I did not stop in Yuma. I asked my escort how long he thought the border patrol would last. He said it would be permanent and that the railroads were going to put all trains under street guard again to keep the bums off the trains.

"At the west end of the bridge I was stopped by three Los Angeles policemen who asked a few questions and let me pass, after taking down my name and address from my driver's license. They showed no inclination to be hard-boiled.

"I walked down the highway through Winterhaven and found a place to sleep in the tall grass and sagebrush by the roadside. I dreamed for the rest of the night of piles of tempting food being cooked over a jungle fire while I was tied to a nearby tree by a policeman."

The report on "indigent alien transients" made by James E. Davis, chief of police, on March 11, 1936, speaks of the border blockade as a great success because it had saved the State millions of dollars and given Nation-wide publicity. It stated: "Perfect harmony exists between our officers and the local enforcement agencies of the localities where our patrols are operating."

An analysis of other parts of this report reveals much irrelevant data. One table shows the total of major crimes and total crimes committed in Los Angeles, which shows a decrease for the past 3 years. Other tables show that the number of transients coming into the State was increasing during this period. If these two sets of figures have any connection they would seem to indicate that an increase in transients leads to a decrease in crime, a conclusion which even the friends of transients would scarcely draw.

The figures compiled by the statistician of the police department regarding "foreign transient activities" show that although a considerable number of technical arrests of persons evading railway fare or on vagrancy charges were made by the border patrol, up to March 9 only six persons had been arrested on any more serious charge. While the statement was made that 18 percent of the transients had previous criminal records, it will be noted from the table that there were only 272 persons with records although contacts were made, according to the figures of the department, with 7,081 persons. It should be kept in mind that the police department considered anyone to have a previous record who had ever been arrested for any reason, including arrest for simple vagrancy (lack of funds), or arrest for minor traffic violations.

TABLE 32.—*"Foreign transient activities" of Los Angeles Police Department*

	Total	Southern area	Central area	Northern area
Total technical arrests made	927	670	71	186
Evading railroad fare	135	46	20	69
Vagrancy	606	611	50	45
Others	6	3	1	2
Previous record:				
Number	372	196	18	58
Percent	48	45	68	46
Entered:				
Via railroad	811	603	74	80
Via highways	69	58	12	22
Total leaving State	6,941	5,054	299	630
Sent back	1,073	1,199	66	108
Left on voluntarily	4,971	3,855	234	882

NOTE.—Transients picked up locally by Los Angeles Police Department and not sent out of state, 743.

SOURCE.—Figures compiled March 9, 1936, by Rhoda Cross, statistician, Los Angeles Police Department.

The chief of police, on March 11, recommended that the work of stopping transients at the border be carried on (1) by various departments of the State government, including the department of motor vehicles, the board of equalization (in connection with the collection of the tax on caravan cars), the department of agriculture (in connection with plant quarantine), the State department of health by establishing border quarantine stations; (2) through agreements with authorities from other States; (3) by the counties whose supervisors should make appropriations for additional deputy sheriffs and secure State grants to counties for additional sheriffs; (4) by the railways which should employ additional special agents; and (5) that the State relief administration should take "action in accordance with policy of this agency."

It may be noted that a recommendation was not made that the Los Angeles Police Department should continue its activities. About the middle of April all of the Los Angeles officers were withdrawn from the border of the State.

APPENDIX K

COMPILATION OF ALL STATE ANTIMIGRATORY LEGISLATION, INCLUDING EXCLUSION LAWS AND REMOVAL STATUTES

ALABAMA CODE (1940)

SEC. 19. *Offense in bringing paupers into state.*—Any person who shall bring or remove or cause to be brought or removed any poor person from any place without this state into any county or municipality without, with the intent of making such county or municipality chargeable with his support, shall be guilty of a misdemeanor, and upon conviction shall be fined not less than fifty nor more than three hundred dollars; and the justice or court before whom such person shall be proceeded against for a violation of the provisions of this section shall, by its judgment, require of such person satisfactory surety that he will, within a reasonable time to be fixed, transport such person out of the state, or indemnify such county or municipality for all charges and expenses which have been or may be incurred in his support; and, in case of neglect or refusal so to do, may sentence such person to hard labor for the county or municipality for a term not to exceed three month (1927), p. 521.

SEC. 20 (2896, 1617, 3238, 1470, 1746, 1465, 1219). *Captains of vessels bringing paupers to the state to give bond, penalty for breach, penalty for refusal.*—Any person commanding any vessel which brings into this state any infant, lunatic, maimed, deaf, dumb, aged, or infirm person, who is likely so to become chargeable to any county, may be brought before any judge of probate, and if such judge is satisfied that such person will probably be a charge to any county, he must require such master to enter into bond, payable to the state, with sureties resident

in the state, to be approved by such judge, in the sum of five hundred dollars for each of such persons so brought, conditioned to pay all such expenses as any county in the state may incur in the support of such person; which bond must be filed and kept by such judge, and, on its condition being broken, may be sued on, and a recovery had in different actions to the amount of the penalty thereof, in the name of the state, for the use of the county, and on failure to give such bonds, the judge must commit such master to jail until he gives the same, or is otherwise discharged by law.

SEC. 11. 27:2 (1603). *Strolling paupers removed, and, if sick, relieved.*—In case any pauper shall leave the county in which he may have a settlement, and remove to another county, the county governing body, or any member thereof, may make an order to remove the pauper back to the county from which he came, directed to any constable to execute. But if the pauper be sick or disabled, so that he cannot be removed, he shall be provided for in the county in which he may be found until he can be removed. And it shall be the duty of the governing body of the county to which any pauper belongs to receive him, on his removal, and provide for him as in other cases (Ib.).

CALIFORNIA WELFARE AND INSTITUTIONS CODE (DEERING, 1937)

SEC. 2502. *Right to incur expense in returning nonresident indigent to place of residence.*—If no other funds are available for the purpose, a county may incur all necessary expenses in transporting a nonresident indigent to another State or county when information at hand reasonably tends to show that the person has a legal residence in such State or county.

SEC. 2503. *County responsible for indigent may agree to support him in county wherein he resides; agreement not to alter legal residence; record to be furnished department.*—Whenever the respective boards of supervisors deem it best for the welfare of a family or in the public interest that an indigent remain in a county not responsible for his support, the county responsible for the support of the indigent may agree to support him in the county not so responsible; but no indigent supported in this manner shall be deemed to have acquired a residence in the nonresponsible county. Such agreement shall be made by the responsible county with the nonresponsible county, and a record or copy thereof shall be sent to and filed in the office of the State Department of Social Welfare.

SEC. 2550. *Requirements generally.*—Except as otherwise provided in this chapter, a person, in order to be entitled to aid, shall be a resident of the State and of the county wherein application is made.

BRINGING INDIGENT INTO THE STATE

SEC. 2615. *Willful act a misdemeanor.*—Every person, firm, or corporation, or officer or agent thereof that brings or assists in bringing into the State any indigent person who is not a resident of the State, knowing him to be an indigent person, is guilty of a misdemeanor.

CALIFORNIA PENAL CODE (1939)

SEC. 19. *Punishment of misdemeanor, when not otherwise prescribed.*—Except in cases where a different punishment is prescribed by any law of this State, every offense declared to be a misdemeanor is punishable by imprisonment in the county jail not exceeding six months or by fine not exceeding five hundred dollars, or by both (1933: 2216).

COLORADO STATUTES, ANNOTATED, CHAPTER 124

SEC. 10. *Bringing paupers into county—Liability.*—If any person shall bring and leave any pauper or paupers in any county in this state, wherein such pauper is not lawfully settled, knowing him or them to be paupers, he shall forfeit and pay the sum of two hundred dollars for every such offense, to be sued for and recovered by and to the use of such county, by action of debt, before any court having competent jurisdiction; and the suit may be brought in the county where the pauper was so brought and left, and the process may be directed to and served by any proper officer in any county in this state (G. S., § 2537; G. L., § 2003; R. S., p. 406, § 9; R. S. '08, § 4798; C. L., § 8914).

The intention of the legislature in enacting this section was to punish any person who, knowingly and intentionally, caused a pauper to be taken from the county where domiciled and transported to another, with the knowledge and

intention of relieving the county of domicile from a charge of support, and making the person a charge upon the other county (*Board of County Com'rs* v. *Law*, 3 Colo. App. 328, 33 p. 143).

Person must be a pauper within legal definition of word.—In order to warrant a conviction under this section it must appear beyond controversy that the person was a pauper within the legal definition of the word, had legal domicile in the county from which the removal was made, and not in the county to which he was taken or sent, and a knowledge of the facts by the person charged from which the intention, if not expressed, could legally be implied (*Board of County Com'rs* v. *Law*, 3 Colo. App. 328, 33 p. 143).

In cases under this section intent is an element of the offense (*Board of County Com'rs* v. *Law*, 3 Colo. App. 328, 33 p. 143).

SEC. 7. *Notice to proper county. Relief. Liability.*—If any person shall become chargeable in any county in which he or she did not reside at the commencement of the six months immediately preceding his or her becoming so chargeable, he or she shall be duly taken care of by the county commissioners where he or she may be found, and it shall be the duty of the clerk of the county commissioners to send notice by mail to the clerk of the county commissioners of the county in which such pauper resided as before stated, that said person has become chargeable as a pauper, and requesting the authorities of said last-named county to remove said pauper forthwith, and to pay the expenses accrued in taking care of him, her, or them (G. S., § 2534; G. L., § 2000; R. S., p. 495, § 6; R. S. '08, § 4795; C. L., § 8941; L. '31, p. 676, § 2).

CONNECTICUT REVISED STATUTES (1930)

SEC. 1691. *How persons settled in other towns are removed.*—When any person having a settlement in any town in this state shall go to reside in some other town, and, before he shall have gained a settlement in the town to which he has gone, he or any of his family shall become chargeable, the selectmen, after giving notice to the town to which such pauper belongs to remove him and his family and on failure of such town to make such removal, may apply to any justice of the peace, who shall issue his warrant, directed to either constable of the town where such pauper is, commanding such constable to remove such pauper to the town where he has his settlement. Such constable shall execute such warrant, and the lawful fees for the service of the same at the rate allowed for service of criminal process shall be paid by the town to which such pauper belongs.

SEC. 1690. *Deportation.*—When any person who is an inhabitant of some other state or country shall come to reside in any town in this state, and shall become chargeable or make application for aid during the first year of his residence in such town, the selectmen, or, in the case of a state pauper, the state agent, may, at any time during such period or within sixty days thereafter, apply to any justice of the peace therein, who shall issue his warrant to either constable of such town, any state policeman, or other proper officer, ordering him to transport such pauper to the place in the state or country whence he came to this state, or to the place of his former residence, at the discretion of the selectmen or the state agent applying for such order. Such officer shall execute such warrant, and the expense thereof, having first been audited and approved by the selectmen, shall be paid by such town, or, if such application was made by the state agent, the expense shall be audited by the state agent and paid by the state. The word "selectmen," as used in this section, shall be construed to include any other officer or board which, instead of the selectmen, lawfully exercises the powers and duties of overseers of the poor.

SEC. 1692. *Forfeiture for bringing indigent person into a town.*—Each person who shall bring into and leave in, or cause to be brought into and left in, any town in this state, any indigent person who is not an inhabitant of such town, and who shall become chargeable within one year after having been so brought into and left in such town, shall, on demand of the selectmen thereof, remove such indigent person out of such town to the town from which he came; and, if such person so bringing and leaving, or causing to be brought and left, such indigent person in any town in this state as aforesaid, shall, on demand of the selectmen of such town, fail to remove such indigent person out of such town to the place from which he came, he shall forfeit and pay to the town in which such indigent person shall have been left, the sum of seventy dollars; and, if such indigent person shall have been so brought and left in such town, with the intent on the part of the person so bringing and leaving him, or causing him to be so brought and left, to make him chargeable or any expense to such town, such person so bringing and leaving, or causing to be so brought and left, such indigent person, shall forfeit and pay to

the town, into which such person shall have been brought and left, the sum of one hundred dollars and all the expenses incurred by such town in the maintenance of such indigent person.

Connecticut Revised Statutes (Supp. 1935)

Sec. 667c. *Interstate transportation.*—The commissioner of welfare is authorized to enter into reciprocal agreements with other states regarding the interstate transportation of poor and indigent persons and to arrange with the selectmen for the acceptance and support of persons receiving public aid in other states in accordance with the terms of such reciprocal agreements.

Connecticut Revised Statute (Supp. 1939)

Sec. 559c. *Deportation.*—When any person who has a legal settlement in some other state or country shall come to reside in any town in this state, and shall become chargeable or make application for aid, the selectmen, or in the case of a state pauper, the commissioner of welfare may apply to any justice of the peace of the town wherein such person becomes chargeable or has made application for aid, or to any court having jurisdiction, and such justice or such court shall issue a warrant to either constable of such town, any state policeman, or other proper officer, ordering him to transport such person to the place in the state or country whence he came to this state, or to the place of his former residence, at the discretion of the selectmen or the commissioner of welfare. Such officer shall execute such warrant, and the expense thereof, having first been audited and approved by the commissioner of welfare, shall be paid by the town, or, if such application was made by the state agent, the expense shall be audited by the state agent and paid by the state. The word "selectmen," as used in this section shall be construed to include any other officer or board which, instead of the selectmen, lawfully exercises the powers and duties of overseers of the poor.

Florida, Comptroller General Laws (1927)

Sec. 8002. *Landing sick seamen or paupers in the seaports of the State.*—If any master or commander of any ship or vessel shall discharge or cause to be put ashore any sick or disabled sailor or sailors belonging to his ship or vessel, not entitled to his or their discharge, by the contract between them, or any servant, without taking due care of his or their maintenance, and cure, or who shall land from any such ship or vessel any pauper or vagrant, without the means of procuring his or her or their maintenance for the space of one month in any port of the State of Florida, he shall be fined in a sum not more than one hundred dollars, or be imprisoned for a period of not more than sixty days. (Ch. 4593, Acts 1897, sec. 1).

Georgia Code, Annotated (1935), Title 23, Chapter 23-23

Sec. 23-2305 (557). *Persons removing paupers, liability.*—When any inhabitant of any county, city, town, or village in or out of the State sends a pauper to some county in this State, by paying the expense of transportation, or otherwise has him removed for the purpose of burdening some other community, the person doing so shall be personally liable for the support of the pauper in the county where he locates.

Sec. 23-2306 (558). *County liable, when.*—If the person so engaged in transporting a pauper is insolvent, or does not respond to such demand from any cause, the county from which the transportation took place shall be liable.

Sec. 23-2307 (559). *Paupers left by migratory companies, etc.*—If any person commanding any vessel, or the manager or proprietor of any theatrical, circus, or any other migratory company, or their agent, or any person passing or moving through this State shall bring and leave or abandon herein any infant, lunatic, maimed, deaf and dumb, blind, aged or infirm person, who is or is likely to become chargeable to the county, he may be brought by warrant before any judicial officer.

Illinois Statutes, Annotated (Smith-Hurd, 1935), Chapter 107

Sec. 13. *Bringing pauper into county—Penalty.*—If any person shall bring and leave any pauper in any county in this state, wherein such pauper is not lawfully settled, knowing him to be a pauper, he shall forfeit and pay the sum of $100 for

every such offense, to be sued for and recovered by and to the use of such county by action of debt, before any justice of the peace in the proper county (1874, March 23, R. S. 1874, p. 754, sec. 13).

ILLINOIS STATUTES, ANNOTATED (SMITH-HURD SUPP. 1940), CHAPTER 107

SEC. 16. *Residence requirements—Removal of pauper from city, township, or county.*—No city, village, incorporated town, county, or township required by this Act to provide relief and support to residents therein shall furnish such relief or support to any person who did not reside therein for a period of three years immediately preceding his application for relief and support. If, however, any person did, for said three year period, reside in some other city, village or incorporated town in this State charged with the relief and support of poor and indigent persons or some other county or town in this State, it shall be the duty of the overseer of the poor of the municipality, county or town, as the case may be, to send written notice by mail or otherwise, to the overseer of the poor of such other city, village or incorporated town in which such pauper so resided, or, in counties not under township organization, to the county clerk of the county in which the pauper so resided, or, if he then resided in a town supporting its own poor, to the overseer of the poor of such town, requesting the proper authorities of such city, village or incorporated town, county or town, as the case may be, to remove said pauper forthwith, and to pay the expenses accrued or to accrue in taking care of the same; and such city, village or incorporated town, county or town, as the case may be, where such pauper resided, shall pay to the city, village, incorporated town, county or town, in the event it takes care of such pauper, all reasonable charges for the same, and such amount may be recovered by such city, village or incorporated town, county or town, as the case may be, in any court of competent jurisdiction (as amended 1935, July 11, Laws 1935, p. 1055, sec. 1; 1936, March 6, Laws 1935-36, Second Sp. Sess. p. 73, sec. 1; 1939, July 26, Laws 1939, p. 828, sec. 1).

INDIANA STATUTES, ANNOTATED (BURNS, 1933), TITLE 10, CHAPTER 46

SEC. 10-4601 [2865]. *Pauper—Bringing into state.*—Whoever, knowingly, brings within this state a pauper with the intention of making him a charge upon any of the counties of this state, shall, on conviction, be fined not less than ten dollars [$10.00] nor more than one hundred dollars [$100] (Acts 1905, ch. 169, Sec. 634, p. 584).

INDIANA STATUTES, ANNOTATED (BURNS, SUPP. 1940), TITLE 52, CHAPTER 1

SEC. 52-161. *Removal of nonresident poor—Justice of the peace—Procedure.*—Upon complaint of any overseer of the poor, any justice of the peace may, by his warrant directed to and to be executed by any constable, or by any other person therein designated, cause any poor person found in the township of such overseer, likely to become a public charge and having no legal settlement therein, to be sent and conveyed, at the expense of the township in the place where such person belongs, if the same can be conveniently done; but if he or she cannot be so removed, such person shall be relieved by such overseer whenever such relief is needed (Acts 1935, ch. 116, Sec. 21, p. 432).

IOWA CODE (1939)

SEC. 3828.091. *Importation prohibited.*—If any person knowingly bring within this state or any county from another county in this state any pauper or poor person, with the intent of making him a charge on any of the townships or counties therein, he shall be fined not exceeding five hundred dollars, and be charged with his support (C51, sec. 2736; R60, sec. 4379; C73, sec. 4045; C97, sec. 5009; C24, 27, 31, 35, sec. 5314).

SEC. 3828.090. *Foreign paupers.*—1. Any person who is a county charge or likely to become such, coming from another state and not having acquired a settlement in any county of this state or any such person having acquired a settlement in any county of this state who removes to another county, may be removed from this state or from the county into which such person has moved, as the case may be, at the expense of the county wherein said person is found, upon the petition of said county to the district or superior court of that county.

2. The court or judge shall fix the time and place of hearing on said petition and prescribe the time and manner of service of the notice of such hearing.

3. If upon the hearing on said petition such person shall be ordered to remove from the state or county and fails to do so, he shall be deemed and declared in contempt of court and may be punished accordingly (C51, sec. 811; R60, sec. 1379; C73, sec. 1354; C97, sec. 2225; C24, 27, 31, 35, sec. 5313).

SEC. 3828.073 *"Poor person" defined.*—The words "poor" and "poor person" as used in this chapter shall be construed to mean those who have no property, exempt or otherwise, and are unable, because of physical or mental disabilities, to earn a living by labor; but this section shall not be construed to forbid aid to needy persons who have some means, when the board shall be of opinion that the same will be conducive to their welfare and the best interests of the public (C97, sec. 2252; C24, 27, 31, 35, sec. 5297).

KANSAS GENERAL STATUTES, ANNOTATED (CORRICK, 1935)

SEC. 39-338. *Unlawful to send certain persons into another county, when.*—It shall be unlawful for any person either directly or indirectly to send or be instrumental in sending or causing to be sent out of the county where such person properly belongs, any pauper or person who is or is likely to become an object of public charity, into any other county of this state, except in the manner provided for in this act (L. 1862, ch. 163, § 39; June 30; G. S. 1868, ch. 79, § 39; R. S. 1923, § 39-338).

SEC. 39-339. *Penalty for violating § 39-338.*—Any person who shall violate the provisions of section 39 [39-338] of this act shall be deemed guilty of a misdemeanor, and shall be liable to a fine of not exceeding one hundred dollars, or imprisonment in the county jail not exceeding one year, or both such fine and imprisonment (L. 1862, ch. 163, § 40; June 30; G. S. 1868, ch. 79, § 40; R. S. 1923, § 39-339).

KENTUCKY STATUTES, ANNOTATED (BALDWIN'S, 1936), CHAPTER 102

SEC. 3922. *Paupers not to be brought from other states.*—No persons shall bring into this state from another state, or from any county in this state into another, any poor person, except his father, mother, or child, who is likely to become chargeable to the county into which such person may be brought (G. S., ch. 86, sec. 1).

SEC. 3923. *Persons bringing paupers here; how dealt with.*—Any person offending herein, shall, on the warrant of a justice or the county judge of the county aggrieved, be arrested and recognized with surety to appear before the county court to answer for the offense; and on his failure to give surety, he shall be committed to jail until court, or until bail is given (G. S., ch. 86, sec. 2).

SEC. 3924. *Bond may be required of offender; penalty.*—The county court may require such person to give an obligation, with surety, that the poor person so introduced shall not become chargeable to the county; and upon failure to execute such obligation, he shall be fined not exceeding one hundred dollars ($100.00) (G. S., ch. 86, sec. 3).

MAINE REVISED STATUTES (1930), CHAPTER 33

SEC. 36. *Foreign paupers may be removed; exception of families of volunteers (R. S., c. 29, sec. 40).*—On complaint of overseers, that a pauper chargeable to their town has no settlement in this state, any judge of a municipal or police court, or trial justice, may, by his warrant directed to a person named therein, cause such pauper to be conveyed, at the expense of such town, beyond the limits of the state to the place where he belongs; but this section does not apply to the families of volunteers enlisted in the state who may have been mustered into the service of the United States.

SEC. 43. *Penalty for bringing paupers into a town (R. S., c. 29, sec. 47; 1929, c. 90).*—Whoever brings into and leaves in a town any poor, indigent, or insane person, having no visible means of support, and having no settlement in such town, or hires or procures such person to be so brought, or aids or abets in so doing, knowing such person to be poor, indigent, or insane as aforesaid, with intent to charge such town in this state with the support of such person, shall be punished by a fine of not more than three hundred dollars, or by imprisonment for not more than eleven months. And shall be further liable to any town or to the state for such sums of money as are expended by such town or by the state for the support and maintenance of such person, which may be recovered in an action on the case.

Massachusetts Laws, Annotated (1933), Volume IV, Chapter 117

Sec. 28. *Penalty for leaving poor persons where not settled.*—Whoever brings in or and leaves a poor and indigent person in any town in the commonwealth, wherein such person is not lawfully settled, knowing him to be poor and indigent, and with intent to charge such town with his relief or support, shall forfeit not more than one hundred dollars to the use of such place (1788, 61, sec. 9; 1793, 59, sec. 13; R. S. 46, sec. 24; 1849, 66; G. S. 70, sec. 20; P. S. 84, sec. 31; R. L. 81, sec. 35).

General Consideration: The section applies to public officers as well as private persons. They are included in the word "whoever." *Palmer* v. *Wakefield*, 102 Mass. 214. It seems that an action for the penalty under this section should be brought in the name of the commonwealth. *Sturbridge* v. *Winslow*, 38 Mass. (21 Pick.) 83.

Evidence: On the trial of an action under this section, evidence that the poor person was receiving aid as such from the commonwealth at the time of his removal into the plaintiff town is not competent to prove that he did not have a settlement in that town. *Franklin* v. *Fuller*, 105 Mass. 336.

Defenses: Where defendant acted under orders from proper authorities of one town, it was held that it was not necessary that the order should recite acts and proceedings warranting its issuance, and the defendant, leaving the indigent person in the town pursuant to the order, was not bound to go behind the order and show that his superiors had complied with the law. *Sturbridge* v. *Winslow*, 38 Mass. (21 Pick.) 83. The intention of an officer being found to be innocent, deviation from his orders did not subject him to the penalty of this section. *Deerfield* v. *Delano*, 18 Mass. (1 Pick.) 465, cited in note, 43 L. R. A. (N. S.) 3.

State in *Greenfield* v. *Cushman*, 16 Mass. (16 Tyng) 393.

Sec. 23. *Person chargeable to city or town may be removed out of state, when.*—A person who has actually become chargeable to a town where he has a settlement and who subsequently acquires a settlement in a place out of the commonwealth may be removed thereto by the board of public welfare of such town by a written order directed to any person therein designated (1868, 328, sec. 2; P. S. 84, sec. 26; R. L. 81, sec. 30; 1928, 155, sec. 25).

Sec. 25. *Person aided may be removed to place of settlement.*—The board of public welfare of a town to which a person has actually become chargeable may give written notice thereof to and request his removal by one or more of the members of the board of public welfare of the town where his settlement is supposed to be, who may, by a written order directed to a person designated therein, cause such removal to be made (1793, 59, secs. 9, 10; R. S. 46, sec. 19; G. S. 70, sec. 17; P. S. 84, sec. 28; R. L. 81, sec. 32; 1931, 394, sec. 120).

Michigan Statutes Annotated (1937)

Sec. 16.154. *Poor persons, bringing into county, penalty (sec. 14).*—Any person who shall send, carry, transport, remove, or bring, or who shall cause or procure to be sent, carried, transported, removed, or brought, any poor or indigent person, from any township, village, city, or county, into any other township, village, city, or county, or from any other state or country, into any county in this state, without legal authority, and there leave such poor person, or who shall entice such poor person so to remove, with the intent to make such county to which the removal shall be made chargeable with the support of such poor person, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be imprisoned in the county jail not exceeding three (3) months, or fined not exceeding one hundred (100) dollars, or both such fine and imprisonment, in the discretion of the court (C. L. '29, sec. 8241).

Sec. 16.159. *Poor person, bringing from without state; forfeiture (sec. 15).*—Any person who shall bring or remove, or cause to be brought or removed, any poor or indigent person, from any place without this state, into any county within it, with intent to make such county chargeable with the support of such poor persons, shall forfeit and pay fifty (50) dollars, to be recovered before any justice of the peace of the county into which such poor person shall be brought, or in which the offender may be; and shall also be obliged to convey such poor person out of the state, or support him at his own expense (C. L. '29, sec. 8246).

Sec. 16.171. *Same; removal to place of settlement, charging such place with expense of support if not removed (sec. 30).*—The supervisor of the township or director of the poor of the city in which it may be alleged any poor person has gained a settlement, may at any time after receiving such notice requiring him to provide

for such poor person, take and receive such poor person to his township or city, and there support him. If he omit to do so, or shall fail to obtain the decision of the county superintendents, so as to exonerate him from the maintenance of such poor person, the charge of giving such notice, and the expenses of maintaining such poor person, after being allowed by the county superintendents, shall be laid before the board of supervisors at their annual meetings, from year to year, as long as such expenses shall be incurred; and the supervisor shall annually add the amount of the said charges to the tax to be laid upon the township or city to which the poor person belongs, together with such sum in addition thereto as will pay the township or city incurring such expenses the lawful interest thereon, from the time of expenditure to the time of payment, which sums shall be assessed, levied, and collected in the same manner as the other contingent expenses of such township or city. The said moneys when collected, shall be paid to the county treasurer, and be by him credited to the account of the township or city which incurred the said expense. (C. L. '29, sec. 8258).

SEC. 16.191. *Removal of poor person to municipality liable for support or care in county where found, duty of superintendents of county chargeable (sec. 5).* The superintendents of the poor, or any of them, of the county sought to be charged with the care, relief, and support of poor persons by means of the notice required by this act, if they, or any of them, shall deem their county, or any township or city of their county, legally liable for the care, relief, and support of such poor person, shall have the right and are authorized to take into their custody and transport such poor person or persons from the county where such poor person or persons may be, to the county, township, or city to which such poor person or persons belong. No superintendent of the poor acting under the provisions of this act, in taking into custody and transporting any poor persons as herein provided, shall become liable in any manner to any action or prosecution for illegal arrest or false imprisonment. If the superintendents of the poor, or any of them, of the county sought to be charged, as aforesaid, shall deem their county, or any township or city thereof, legally liable for such care, relief, and support of such poor person, such superintendents or superintendent, if they or he do not deem it advisable to take into custody and transport such poor persons, as hereinbefore provided, may send a notice directing and authorizing the superintendents of the poor of the county from which the notice provided for in section three (3) of this chapter has been received, to continue such relief and support as the necessity may require. (C. L. '29, sec. 8278).

MINNESOTA STATUTES (MASON'S, 1927), CHAPTER 15

SEC. 3163. *Bringing poor person into state.* Whoever without legal authority shall send, carry, or remove, or cause to be sent, carried, or removed, any insane, idiotic, or poor person from without the state to any county therein, and there leave him, or cause him to be left, with intent to make such county, or any town, city, or village thereof, chargeable with his support or relief, or who with like intent shall induce any such person so to remove, shall forfeit fifty dollars, to be recovered by the treasurer of such county, town, city, or village, for the support of the poor therein, and shall, moreover, be guilty of a misdemeanor. (1490) [3073].

SEC. 9922. *Punishment of misdemeanors when not fixed by statute.* Whoever is convicted of a misdemeanor for which no punishment is prescribed by any statute in force at the time of conviction and sentence shall be punished by imprisonment in the county jail for not more than three months, or by a fine of not more than one hundred dollars. (4763) [8482].

SEC. 3162. *Removal of poor person, settlement.* When a poor person is removed, as hereinafter provided, from one county, town, city, or village to another, and the authorities thereof deny that he is legally settled therein, they shall make temporary provision for his care. If such removal was from one county to another county, or to any town, city, or village of another, the authorities may present the case to the state board of control; if the removal was from one town, city, or village to another within the same county, they may present the case to the county board. The board shall determine the settlement of such person, and certify its findings, and thereupon he shall become a charge upon the county, town, city, or village in which such settlement is found to be, which shall also pay the cost of caring for such person pending the investigation, and of removing him to the place of his settlement, together with the expenses of such investigation, including the fees and mileage of witnesses, and, in the case of the state board, the expenses of its committees or agents. But such findings of the board shall be without prejudice in any litigation arising by reason thereof. (1489) [3072].

SEC. 3173. *Settlement in another county.*—When application for support or relief is made by a person whose settlement is in another county, or in a town, city, or village of another county, the board applied to, or its chairman, shall warn him to depart from its county; and if he is unable or refuses to do so within a reasonable time, and is likely to become a public charge, the chairman may issue an order, under his hand and the seal of the board, to the sheriff or any constable of the county, requiring him to convey such person to the place of his settlement. If he be so sick, infirm, or otherwise disabled as to render it unsafe or inhuman to remove him, and is in immediate need of support or relief, provision therefor shall be made in the manner prescribed in [R. L.] secs. 1497–1499. All proper expenses incurred by such county in making such removal, or in furnishing such support or relief, shall be paid by it, and shall be a legal claim in its favor against the county, town, city, or village in which such person has a settlement (1500) [3083].

MISSISSIPPI CODE, ANNOTATED (1930)

SEC. 5715. *Vessels bringing pauper immigrants, children.*—If any person commanding a ship, vessel, steamboat, or other watercraft, shall import into this state, or bring to the shores or within the limits thereof, any infant, lunatic, maimed, aged or infirm person, or vagrant, who is likely to become chargeable on the county, on the requisition of the supervisor of the district, or the mayor of any city, town, or village, the captain, master, or commander of such ship, vessel, steamboat, or other watercraft shall enter into bond, with sufficient sureties, payable to the county, conditioned to indemnify such county against all charges that may be incurred in the support and care of such person; and any captain, master, or commander failing or refusing to give the bond required, shall forfeit and pay to the county the sum of two hundred dollars for each infant, lunatic, maimed, aged, or infirm person, or vagrant so brought into the state, to be recovered by action (6204; 3587; 3164; 640; 1989; Ch. 23 art. 19; Ch. 14 art. 2 (9)).

SEC. 5716. *Master of vessel landing alien passengers.*—When any ship, vessel, or steamboat shall arrive at any port or harbor with alien passengers on board, who are to be landed or left, and who may become a charge as paupers, the master or commanding officer of the vessel shall, before such passengers, or any of them, leave the ship, vessel or steamboat, deposit with the supervisor of the district where the passengers are to be landed or left, a list of their names, and shall forthwith enter into bond, with sufficient sureties, payable to the county, in a sufficient penalty, with condition to indemnify the county from all expenses which may arise from supporting or maintaining such aliens; and in default of such bond, the captain, master, or commander may be committed by any justice of the peace, or mayor of any city, town, or village, until the bond be executed; and, moreover, the captain, master, or commander shall be liable to be indicted, and, on conviction, shall be fined in the sum of one hundred dollars for each person landed in violation of this section; but the board of supervisors, on investigation of the matter, may dispense with the bond (6205; 3588; 3165; 641; 1990; Ch. 23 art. 20).

SEC. 5707. *Strolling paupers removed and, if sick, relieved.*—The members of the board of supervisors shall prevent the poor from strolling from one district to another, and in case any pauper shall leave the county in which he may have a settlement, and remove to another county, any member of the board of supervisors may make an order to remove the pauper back to the county from which he came, directed to any constable to execute. But if the pauper be sick or disabled so that he cannot be removed, he shall be provided for in the county in which he may be found until he can be removed; and the county in which he had a legal settlement shall pay all charges occasioned by the support of the pauper and for removal, or burial in case of death, which shall constitute a charge against the county, and may be recoverable by action before the proper court. And it shall be the duty of the board of supervisors of the county to which any pauper belongs, to receive him, on his removal, and provide for him as in other cases (6187; 3570; 3147; 633; 1984; Ch. 23 art. 11; Ch. 14 art. 2 (4)).

NEBRASKA COMPILED STATUTES (SUPP. 1939)

SEC. 68-146. *Pauper, bringing into county where legal settlement not established, penalty.*—If any person shall bring or leave any poor person or persons in any county in this state wherein such poor person has not established a legal settlement, knowing him or them to be poor persons, he shall forfeit and pay the sum of one hundred dollars for every such offense, to be sued for and recovered by and to the use of such county, before the county judge or any justice of the peace,

in the proper county (R. S. p. 277; Ann. 9765; Comp. 4626; R. S. 1913, 5810; C. S. 1922, 5155; C. S. 1929, 68-116; 1933 p. 483).

NEVADA COMPILED LAWS (HILLYER, 1929)

SEC. 5147. *Penalty for transporting paupers (sec. 11).*—If any person shall bring and leave any pauper in any county in this state, wherein such pauper is not lawfully settled, knowing him to be a pauper, he shall forfeit and pay the sum of one hundred dollars for every such offense, to be sued for and recovered by and to the use of such county in a civil action before any court having jurisdiction of the same.

SEC. 5153. *Bringing pauper into State misdemeanor—Penalty (sec. 3).*—Every person, firm, or corporation, or the officers, agents, servants, or employees of any person, firm, or corporation, bringing into or leaving within, or aiding in the bringing into or the leaving within, of any pauper or poor or indigent or incapacitated or incompetent person as hereinbefore mentioned, in any country in the State of Nevada, wherein such person is not lawfully settled or not lawfully residing as herein defined, knowing him to be such pauper, poor, indigent, or incapacitated or incompetent person, and for the purpose of imposing said person as a public charge on the county to which said person shall be taken as aforesaid shall be guilty of a misdemeanor and on conviction thereof shall be fined in a sum not less than twenty dollars nor more than five hundred dollars, or by imprisonment in the county jail not more than sixty days, or by both such fine and imprisonment.

NEVADA COMPILED LAWS (HILLYER, SUPP. 1938)

SEC. 5144. *Provisions precedent to granting relief (sec. 8).*—When application is made by any pauper to the board of county commissioners aforesaid, and it shall appear to the satisfaction of said board that the person so applying for relief has resided in said state and county aggreable to the provisions of the foregoing section of this act, said pauper shall be entitled to all of the relief provided by this act; but if, on the contrary, it shall appear to the satisfaction of said board that such pauper has not been a resident of said state and county agreeable to the provisions of the foregoing section, but that said pauper, previous to removing to the said county where said application was made, was a resident of some other county of this state, as required by the foregoing section, said board shall provide temporary relief for said pauper, and immediately notify the board of county commissioners of the county where said pauper last had a residence for six months, and said notice shall be in writing, duly attested by the clerk of the board of county commissioners, and deposited in the post office, addressed to the board of county commissioners of said county, and it shall be the duty of the board of county commissioners receiving said notice to cause said pauper to be immediately removed to their county, and pay a reasonable compensation for the temporary relief afforded, and if said board of commissioners neglect or refuse to remove said pauper, the county affording relief shall have a legal claim against said county for all relief necessarily furnished, and may recover the same in a suit at law (as amended, Stats. 1933, 9).

NEW HAMPSHIRE

For provisions of the New Hampshire law, see brief of amicus curiae, pp. 64-66, "Typical State Anti-migratory Law."

NEW JERSEY STATUTES, ANNOTATED (1940), TITLE 44, CHAPTER 1

SEC. 117. *Duties of overseer.*—The removal of poor persons to their place of settlement or to the place where they became poor before being found or becoming domiciled in the place from which they are to be removed shall, when the removal is to another place in the same county, and in all other cases where there is no superintendent or county adjuster to act as provided in this chapter, be accomplished by action of the overseer where the person is found or resides. (Source: L. 1924, c. 132, sec. 64, p. 283 [1924 Suppl. sec. 161-187].)

SEC. 118. *Duties of county adjuster.*—The county adjuster shall on the application of an overseer forthwith take the steps necessary to the removal of a poor person to another state, or to another county within this state, by negotiating with the proper authority in the other state or county through the commissioner for the reception of the poor person who may be properly removable to a place in that state or county, and shall perform that function for all overseers in the county, and all overseers in a county shall take the steps necessary to such removal

by means of the aid and authority of the county adjuster. (Source: L. 1924, c. 132, sec. 65, p. 283 [1924 Suppl. 161-188], as am. by L. 1931, c. 392, sec. 17, p. 1243.)

SEC. 124. *Bringing poor person into municipality or county unlawfully; misdemeanor.*—A person who shall send, bring, remove, or entice to remove, or cause to be sent, brought, or enticed, a poor person into a municipality or county from any other municipality or county within this state without first having obtained the consent of the overseer of the municipality or the superintendent if there is no overseer appointed and qualified therein, or the county welfare board of the county, as the case may be, or from any other state into any municipality or county within this state without first having obtained the consent of the commissioner and furnished suitable bond, and there leave or attempt to leave the person without first having obtained that consent, in order that the support or maintenance of the poor person upon the municipality or county may be avoided, shall be guilty of a misdemeanor, and the poor person shall not gain a legal settlement thereby and shall be returned from whence he came in the manner provided by law. (Source: L. 1924, c. 132, sec. 70, p. 286 [1924 Suppl. sec. 161-193], as am. by L. 1931, c. 392, sec. 18, p. 1244.)

NEW JERSEY STATUTES, ANNOTATED (1940), TITLE 2, CHAPTER 103

SEC. 6. *Misdemeanors; punishment.*—Any person found guilty of any crime which by any statute is declared to be a misdemeanor, and for which no punishment is specifically provided, shall be punished by a fine not exceeding one thousand dollars, or by imprisonment, with or without hard labor, as the court may direct, for a term not exceeding three years, or both. (Source: L. 1898, c. 235, sec. 218, p. 854 [C. S. p. 1812, sec. 218].)

NEW YORK CONSOLIDATED LAWS, ANNOTATED (MCKINNEY'S, 1930)

SEC. 151. *Penalty for unlawfully bringing a poor person into a public welfare district.*—No person shall, without legal authority, send or bring, or cause to be sent or brought, any poor person into a public welfare district with the purpose of making him a charge on such public welfare district, or for the purpose of avoiding the responsibility of support in the public welfare district from which he is brought or sent. Any person found guilty of such an act shall be guilty of a misdemeanor and liable to a fine of fifty dollars, recoverable in the name of the public welfare district.

This section relates to same subject matter as sec. 50 of the former Poor Law. That section was derived from Poor Law of 1896, sec. 50.

Unlawful removal of poor person. (See Penal Law, sec. 1650.)

Decisions under sec. 50 of former Poor Law—Former provision.—This section formerly required the element of intent to make the person removed a charge on the county to which he was removed and no liability was incurred when such intent was absent. *Cortland County* v. *Herkimer County* (1870), 44 N. Y. 22; *Foster* v. *Crankhite* (1866), 35 N. Y. 139; *Thomas* v. *Ross* (1832), 8 Wend. 672.

Cited: This section was cited in *People* v. *Maynard* (1899), 160 N. Y. 453, 55 N. E. 9; *Matter of McCutcheon* (1898), 25 Misc. 650, 56 N. Y. S. 370; *Thomas* v. *Ross* (1832), 8 Wend. 672.

SEC. 152. *Penalty for bringing nonresident poor into the state.*—Any person who knowingly brings, or causes to be brought, a destitute person from out of the state into this state and leaves him or attempts to leave him for the purpose of making him a public charge, shall be guilty of a misdemeanor punishable by a fine of one hundred dollars, and shall be obligated to convey such person out of the state or to support him at his own expense. The commissioner of the public welfare district to which such destitute person is brought may bring a suit in a court of competent jurisdiction to enforce this obligation. The court shall require satisfactory security from such person that he will convey the destitute person out of the state within the time fixed by the court or will indemnify the public welfare district for all charges and expenses incurred for the support or transportation of such destitute person. If such person refuses to give security when so required, the court may commit him to jail for not exceeding three months.

This section covers same subject matter as sec. 55 of the former Poor Law. That section was derived from Poor Law of 1896, sec. 55.

Decisions under sec. 55 of former Poor Law—Defenses: In an action under this section, it is no defense that the pauper formerly had a legal settlement in the place to which he was brought, and had not subsequently gained one elsewhere,

nor that the persons making the removal were acting under the authority of another state (*Winfield* v. *Mapes* (1847), 4 Denio 571).

Liability of carrier. Carriers of passengers are within the letter but not within the spirit of law and cannot be charged, unless in bringing poor or indigent persons into a city or town and leaving them there they act fraudulently (*Thomas* v. *Ross* (1832), 8 Wend. 672).

Form of remedy. Overseers of the poor who have extended money for the maintenance of the pauper cannot maintain an action against the person who brought into the town the pauper having no legal settlement in the state, for the amount so expended. Their remedy is under the statute to recover the penalty given in such case (*Crouse* v. *Mabbit* (1814), 11 Johns.).

SEC. 59. *Removal of a person to the public-welfare district of his settlement.*— When a person cared for in the public-welfare district where he is found shall have a settlement in some other public-welfare district within the state, the public-welfare official responsible for his support may send for and remove such person and care for him in his own public-welfare district, or elsewhere, when it shall seem for the best interests of such person that he be so removed. If such person shall refuse to be so removed, the commissioner of the public-welfare district responsible for his support may apply to the county judge of his county for the issuance of an order to the sheriff of the county, or to some other person or persons, for the removal of the person to the public-welfare district legally responsible for his support. If the person is not so removed, the commissioner shall continue to be responsible for his support in the public-welfare district where he is found.

SEC. 73. *Removal of nonresident and alien poor to other states and countries.*— When any person who is an inmate of any public home or is otherwise cared for at the expense of the state or of any public-welfare district belongs to or has friends willing to support him or to aid in supporting him in any other state or country, the superintendent of state and alien poor may cause his removal to such state or country, provided in the judgment of the superintendent the interest of the state and the welfare of such person will be thereby promoted. The expense of such removal shall be paid from the state treasury on the warrant of the comptroller pursuant to a verified account submitted by the superintendent of state and alien poor or other person legally incurring the expenditure.

This section relates to similar subject matter as sec. 99 of the former Poor Law. That section was derived from Poor Law of 1896, sec. 99.

RHODE ISLAND GENERAL LAWS, ANNOTATED (1938), CHAPTER 70

SECTION 1. If any person shall bring into and leave any poor and indigent person in any town wherein such pauper is not lawfully settled, knowing him to be poor and indigent, unless by an order of removal made by a town council in the State, he shall forfeit $100.00 for every such offense, to be sued for and recovered by the town treasurer to the use of such town, or shall be fined not exceeding $20.00 (G. L., 1923, Chap. 106, Sec. 1).

SEC. 2. Every railroad company or owner of a steamboat, whose officers or servants shall bring any poor and indigent person into the State and shall leave such person therein, shall be liable for the relief and support of such person for and during 12 months next after his being brought into the state, to be recovered in an action of the case in the name of director of public welfare, to the use of the state; and said company or owners shall, upon the written order of said director, return such person to the place from which such company or owner brought him. Every such company or owner willfully refusing or neglecting to comply with such order shall forfeit $500.00, to be recovered by said director to the use of the state (G. L., 1923, Chap. 106, Sec. 9.).

SEC. 5. Upon such complaint the town council may inquire, either by the oath of such poor person, or otherwise, in what town he was last legally settled, and, upon the best information they can obtain, may adjudge and determine to what town he lawfully belongs within the state, or in which he was last legally settled; which being done, the town council shall make an order under their seal, to be signed by their clerk, for the removal of such person to such town.

SEC. 6. Such order shall be directed to the town sergeant or one of the constables of such town, who shall proceed forthwith to remove such person and such of his family, if any he have, as by law ought to be removed with him, to the town or place to which he is adjudged by such order to belong and there deliver him to one of the directors of public welfare of such town, and leave an attested copy of the order with such director.

Conclusiveness of order.— Order for removal, when unappealed from, is conclusive. *Tiverton* v. *Fall River*, 7 R. I. 182.

Right of removal limited.—Since the operation of statute is necessarily confined to this state, right of removal under statute is properly limited to removal to town in this state. *Exeter* v. *Richmond*, 6 R. I. 149.

SEC. 14. If any person who has been or may hereafter be removed by an order of removal from any town in the state to any other town therein, shall voluntarily return to the town from which he was so removed, without leave first obtained of the town council of such town for so doing, and the town council of such town shall subsequently cause such person to be again removed to the same town, the town to which such person shall have been so subsequently removed shall pay to the town so removing such pauper the cost of every such subsequent removal, not exceeding 20 cents per mile, to be recovered in an action of the case in the name of the town treasurer of the town from which such person shall have been removed.

SEC. 19. If any person in any town shall willfully suffer or permit any person who has been removed or ordered to depart as hereinbefore provided from such town by the town council thereof, to occupy or reside in his house or possessions after notice of such removal or order of departure given, by the town sergeant or any one of the constables of the town, by order of the town council, such person shall forfeit $50.00, to be sued for and recovered by the town treasurer to the use of the town.

SOUTH DAKOTA CODE (1939), TITLE 50

SEC. 50.0106. *Sending poor persons out of county.*—It shall be unlawful for any person, either directly or indirectly, to send, or be instrumental in sending or causing to be sent, out of the county where such person properly belongs, any person who is or is likely to become an object of public charity, into any other county of this state, except in the manner provided for in this title. (Source: sec. 10063, Rev. Code 1919, revised in form.)

SEC. 50.9901. *Sending poor person from county otherwise than as provided by law.*—Any person who violates the provisions of section 50.0106, shall be guilty of a misdemeanor and punished by a fine not exceeding one hundred dollars, or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment. (Source: Sec. 10064, Rev. Code 1919, revised in form.)

SEC. 50.0501. *Justice of municipal court to issue warrant.*—Upon complaint of any county commissioner, any justice of the peace or municipal court may issue his or its warrant, directed to and to be executed by any constable or by any other person therein designated, to cause any poor person found in the county, likely to become a public charge and having no legal settlement therein, to be sent, at the expense of the county, to the place where such person belongs, if the same can be conveniently done; but if he or she cannot be removed, such person shall be relieved by such commissioners whenever such relief is needed. (Source: Sec. 10048, Rev. Code, 1919, revised to make specific provision for issuance of warrant by municipal court.)

SEC. 50.0209. *Civil penalty for bringing pauper into county.*—Every person who shall bring into and leave any person in any county wherein such person is not lawfully settled, knowing such person to be a pauper, shall forfeit and pay the sum of one hundred dollars for every such offense, to be recovered by action in the name of the county. No property shall be exempt from seizure and sale in such case; and it shall be the duty of the board of county commissioners to institute actions for all violations of this section; and all such penalties, when collected, shall be paid into the county treasury for the use of the county. (Source: Sec. 10065, Rev. Code, 1919.)

VERMONT PUBLIC LAWS (1933), TITLE 15, CHAPTER 160

SEC. 3948. *Duties of overseer.*—The overseer of the poor of a town chargeable with the support of paupers who are residing in another town may remove such paupers to the town chargeable with their support (G. L. sec. 4243).

SEC. 3949. *From without state; jurisdiction.*—A person who comes into a town in the state with intent to become chargeable as a pauper to such town, unless such town is liable for his support, shall be imprisoned not more than six months or fined not more than twenty dollars. Justices' and municipal courts shall have jurisdiction of offenses under this section, but a justice, judge or juror shall not act in the trial of a prosecution relating to the town in which he resides (G. L. sec. 4245).

SEC. 3950. *Charging town with pauper.*—A person who brings a poor and indigent person from any town in the state to another town in the state, or aids therein, with intent to charge such town with his support, shall forfeit to such town a sum not exceeding five hundred dollars; and, if such town is not liable for

the support of such poor and indigent person, the person making such removal, or aiding therein, also shall be liable, from time to time, to pay such town such damages as accrue for the support of such poor person, which, as well as the penalty, may be recovered in an action of tort, on this statute, in the name of the town (1919, No. 107, G. L. sec. 4246, 11 Vt. 494, 13 Vt. 228, 16 Vt. 644, 33 Vt. 205, 40 Vt. 245, 44 Vt. 245, 44 Vt. 662, 61 Vt. 139, 64 Vt. 415).

SEC. 3951. *Same; removal.*—The selectmen of a town, if the town is not liable for the support of such poor and indigent person, without forfeiture or penalty, within one year after a poor and indigent person comes to the town, provided such person has there become a town charge, may return such person to the town from which he last came (1919, No. 107, G. L. sec. 4246).

SEC. 3953. *Bringing pauper from without state.*—A person who brings from without the state and leaves in a town in the state or so brings with intent to leave, a poor and indigent person having no visible means of support, knowing such person to be poor and indigent as aforesaid, or hires or procures such person to be so brought, or aids or assists therein, with intent to charge such town with the support of such person, shall be imprisoned not more than one year or fined not more than five hundred dollars nor less than one hundred dollars, and shall be further liable to the town for such sums of money as are expended by it for the support and maintenance of such person, which may be recovered in an action of tort, on this statute (G. L. sec. 4247, 50 Vt. 170, 51 Vt. 160, 102 Vt. 180).

WASHINGTON REVISED STATUTES, ANNOTATED (REMINGTON'S 1933)

SEC. 9989. *Proceedings to expel pauper.*—When application is made by any pauper to the board of county commissioners as aforesaid, if it shall appear to the satisfaction of said board that the person so applying for relief has resided in said county agreeably to the provisions of the foregoing section [9987] he shall be entitled to all the relief provided by this title; but if, on the contrary, it shall appear to the satisfaction of said board that such pauper has not been a resident of said county agreeably to the provisions of section 9987, they shall proceed to remove from their county, at the expense of said county, such pauper to the county where such pauper may have his residence, or may, if they think best, issue a notice directed to some constable of the county, which notice said constable shall serve forthwith on said pauper, requiring him to depart forthwith from the county; and after so serving said notice by reading the same to said pauper, said constable shall, within five days thereafter, return the same to the said clerk of the board of county commissioners issuing the same, noting the time and manner of service (L. '54, p. 397, sec. 8; Cd. '81, sec. 2704; 1 H. C., sec. 3095).

SEC. 9992. *Importing pauper.*—If any person knowingly bring within this state any pauper or poor person with the intent of making him a charge on any county or counties therein, he shall be punished by a fine not exceeding five hundred dollars, and stand charged with his support (Cd. '81, sec. 932; 2 H. P. C., sec. 162).

WEST VIRGINIA CODE, ANNOTATED (1937)

SEC. 626 (149) (4). *Bringing indigent persons into State.*—If an indigent person, not having a legal residence in any county of this State, is brought into and left in the State with intent that he should become a public charge, the person who brought or caused to be brought, or counseled or aided in bringing the indigent person into the State, with such intent, shall be guilty of a misdemeanor, and upon conviction shall be fined not less than one hundred dollars, or imprisoned in the county jail not more than sixty days, or both (1936, 1st Ex. Sess., c. 1).

WISCONSIN STATUTES (BROSSARD, 1939), TITLE VII

SEC. 49.06. *Bringing paupers into the state.*—Any person who shall bring or remove or cause to be brought or removed any poor person from any place without this state into any municipality within it, with intent to make such municipality chargeable with his support, shall forfeit fifty dollars; and the justice or court before whom such person shall be proceeded against for a violation of the provisions of this section shall, by its judgment, require of such person satisfactory surety that he will, within a reasonable time to be fixed, transport such poor person out of the state or indemnify such municipality for all charges and expenses which have been or may be incurred in his support; and in case of neglect or refusal so to do commit such person to the county jail until he shall comply with said judgment, but for a term not exceeding three months.

(NOTE.—No person has authority to bring feeble-minded child into this state for purpose of placing it in state institution. 22 Atty. Gen. 112.)

SEC. 49.03 (9). When a poor person is given relief in some other county or municipality than the one in which he has a legal settlement, either county or municipality involved may apply to the county judge or municipal judge of its county or municipality for an order directing such poor person to return to the county or municipality of his legal settlement, all expenses of removal to be paid by the county or municipality in which such poor person has a legal residence or settlement. Upon the filing of such petition the county or municipal judge shall issue an order directing the poor person to return to such municipality, unless it shall clearly appear that such removal would be against his best interests. Upon issuance of any such order no further public relief shall be given to the person to whom it is directed until he shall comply therewith (1931 c. 92; 1935 c. 453; 1937 c. 338, 344, 400; 1939 c. 13, 242).

SEC. 49.04. *County relief of transient and local paupers.* (1) The county board of each county shall have the care of all poor persons in said county who have no legal settlement in the town, city, or village where they may be, except as provided in section 49.03, and shall see that they are properly relieved and taken care of at the expense of the county.

(2) The board may make regulations, not inconsistent with law, in relation to the support and maintenance of such persons and may also contract with any town, village, or city in said county to keep and maintain at the place where the poor supported by the county are kept, such poor persons as may be a charge upon such municipality, at a stipulated price, the amount of which shall be levied and collected in such municipality in the manner county taxes are levied and collected therein.

(3) The board may also, by resolution adopted at its annual or special meeting, at the expense of the county, relieve and take care of all permanent poor persons who may be a charge upon any municipality in such county and cause them to be committed to the county home of such county, pursuant to section 49.07.

WYOMING LAWS (1937)

SEC. 34. *When recipient moves from county to county.* Any recipient who moves to another county in this State shall be entitled, with the approval of the State Department and both County Departments concerned, to receive assistance in the county to which he has moved, but the county from which the recipient moves shall continue to pay the assistance for a period of one year after removal, provided that the recipient remains eligible as provided under the terms of this Act. During this period of one year the County Department of the county to which the recipient has moved shall make investigations of the county from which he moved when such investigations and reports are requested by the said County Department of the county of original residence. At the end of the one-year period the recipient shall, if eligible, be entitled to receive assistance from the county to which he has moved and the County Department of the county of original residence shall transfer certified copies of all necessary records relating to the recipient to the County Department of the county to which he has moved. The provisions of this Section shall not be construed to mean that an eligible recipient of Old Age Assistance, Aid to Dependent Children, or Aid to the Blind will in any instance have his assistance terminated because of the failure of Counties to agree upon his place of residence. In case of such disagreement the State Department is hereby authorized to decide from which County he shall receive his assistance.

SEC. 37. *Eligibility for general relief.* Any indigent person may receive general relief from the County Department of the County in which he is living, provided that he shall have resided in the State of Wyoming and in the county in which he applies, for a period of one year at the time of making application and has not been absent from the State or from the county in which he applies for a period of more than one year immediately preceding the date of application; provided, that absence in the service of the State of Wyoming or the United States shall not be deemed to interrupt residence in the State or county if a domicile be not acquired outside the State. No person may apply toward residence qualifications any period of time during which he is receiving public assistance, except as provided in this Act.

WYOMING REVISED STATUTES, ANNOTATED (COURTRIGHT, 1931), CHAPTER 29, ARTICLE 12

SEC. 29-1205. *Each county to care for its paupers.* If any person shall become chargeable in any county in which he did not reside at the commencement of the ninety days aforesaid, he shall be cared for by the county commissioners of the county where he may be found. And it shall be the duty of the county clerk of said county to send notice by mail to the county clerk of the county in which such person has his permanent residence, that said person has become chargeable as a pauper, and requesting the authorities of said last named county, to remove said pauper forthwith, and to pay the expenses incurred by reason of the care aforesaid. If any such pauper, by reason of sickness or disease, or through neglect of the proper authorities aforesaid to remove him, or if, through any cause, he cannot be removed, then the county taking charge of such pauper may, by civil action, sue for and recover from the county to which such pauper belongs, the sum expended for and on behalf of such pauper, and in taking care of same. (C. L. '76, c. 93, Sec. 5; R. S. '87, Sec. 1957; R. S. '99, Sec. 1262; C. S. '10, Sec. 1345; C. S. '20, Sec. 1504).

Cited in *Board of Com'rs of Sweetwater County* v. *Board of Com'rs of Carbon County*, 6 Wyo. 254, 44 P. 66, annotated under Sec. 29-1201.

SEC. 29-1206. *Misdemeanor to bring pauper into county.* If any person shall bring and leave, or cause to be brought and left, any pauper or paupers in any county wherein such pauper or paupers do not lawfully reside, or shall bring and leave, or cause to be brought and left, in any county, any persons who from any disability will become chargeable upon said county, with intent to make such pauper or paupers a county charge, he shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than one hundred dollars, nor less than twenty-five dollars. (C. L. '76, c. 93, Sec. 6; R. S. '87, Sec. 1958; R. S. '99, Sec. 1263, C. S. '10, Sec. 1349; C. S. '20, Sec. 1505).

WYOMING LAWS (1937)

SEC. 38. *Care of nonresidents.* Whenever any person not qualifying as a resident of the State, as provided in this Act, shall require general relief in any county of this State, the County Department of such county shall provide whatever general relief it may deem necessary in accordance with the rules and regulations of the State Department; provided, however, that the County Department shall promptly communicate with the proper officials of the county and State in which said person has residence or domicile requesting authority to return said person to his place of residence. Upon receipt of such authority the County Department shall provide for the transportation and expenses en route of such transient person to his place of residence; when such transient or nonresident person be possessed of property other than the personal effects necessary for decency and health, he shall be required to dispose of such property and the proceeds therefrom shall be applied toward the purchase of the necessary transportation and expenses.

Whenever any person shall apply to a County Department for general relief and is a resident, as provided in this Act, of the State of Wyoming but not of the county in which he applies, the County Department of the county in which he applies shall provide such general relief as it shall deem necessary in accordance with the rules and regulations of the State Department and shall immediately notify the County Department of the county in which said person has residence as provided in this Act, and such County Department shall promptly authorize the person's return at the expense of the County Department of the county in which the person has applied.

SEC. 49. Article 1, Chapter 84, Wyoming Revised Statutes, 1931; Article 12, Chapter 29, Wyoming Revised Statutes, 1931; Chapter 64, Session Laws of Wyoming, 1935; Chapter 101, Session Laws of Wyoming, 1935; Chapter 129, Session Laws of Wyoming, 1935; and all other laws and provisions of laws in conflict with this Act are hereby repealed.

P. 3.

SUPREME COURT OF THE UNITED STATES.

No. 17.—October Term, 1941.

Fred F. Edwards, Appellant, *vs.* The People of the State of California.	Appeal from the Superior Court of the State of California in and for the County of Yuba.

[November 24, 1941.]

Mr. Justice Byrnes delivered the opinion of the Court.

The facts of this case are simple and are not disputed. Appellant is a citizen of the United States and a resident of California. In December, 1939, he left his home in Marysville, California, for Spur, Texas, with the intention of bringing back to Marysville his wife's brother, Frank Duncan, a citizen of the United States and a resident of Texas. When he arrived in Texas, appellant learned that Duncan had last been employed by the Works Progress Administration. Appellant thus became aware of the fact that Duncan was an indigent person and he continued to be aware of it throughout the period involved in this case. The two men agreed that appellant should transport Duncan from Texas to Marysville in appellant's automobile. Accordingly, they left Spur on January 1, 1940, entered California by way of Arizona on January 3, and reached Marysville on January 5. When he left Texas, Duncan had about $20. It had all been spent by the time he reached Marysville. He lived with appellant for about ten days until he obtained financial assistance from the Farm Security Administration. During the ten day interval, he had no employment.

In Justice Court a complaint was filed against appellant under Section 2615 of the Welfare and Institutions Code of California, which provides: "Every person, firm or corporation, or officer or agent thereof that brings or assists in bringing into the State any indigent person who is not a resident of the State, knowing him to be an indigent person, is guilty of a misdemeanor." On demurrer to the complaint, appellant urged that the Section violated several provisions of the Federal Constitution. The demurrer was over-

ruled, the cause was tried, appellant was convicted and sentenced to six months imprisonment in the county jail, and sentence was suspended.

On appeal to the Superior Court of Yuba County, the facts as stated above were stipulated. The Superior Court, although regarding as "close" the question of the validity of the Section, felt "constrained to uphold the statute as a valid exercise of the police power of the State of California". Consequently, the conviction was affirmed. No appeal to a higher state court was open to appellant. We noted probable jurisdiction early last term, and later ordered reargument (315 U. S. 545) which has been held.

At the threshold of our inquiry a question arises with respect to the interpretation of Section 2615. On reargument, the Attorney General of California has submitted an exposition of the history of the Section, which reveals that statutes similar, though not identical to it have been in effect in California since 1860 [see Cal. Stat. (1860) 213; Cal. Stat. 1901 636; Cal. Stat. (1933) 2003]. Neither under these forerunners nor under Section 2615 itself does the term "indigent person" seem to have been accorded an authoritative interpretation by the California courts. The appellee claims for the Section a very limited scope. It urges that the term "indigent person" must be taken to include only persons who are presently destitute of property and without resources to obtain the necessities of life, and who have no relatives or friends able and willing to support them. It is conceded, however, that the term is not confined to those who are physically or mentally incapacitated. While the generality of the language of the Section contains no hint of these limitations, we are content to assign to the term this narrow meaning.

Article I, Section 8 of the Constitution delegates to the Congress the authority to regulate interstate commerce. And it is settled beyond question that the transportation of persons is "commerce", within the meaning of that provision.[1] It is nevertheless true that the States are not wholly precluded from exercising their police power in matters of local concern even though they may thereby

[1] Gloucester Ferry Co. *v.* Pennsylvania, 114 U. S. 196, 203; Leisy *v.* Hardin, 135 U. S. 100, 112; Covington Bridge Co. *v.* Kentucky, 154 U. S. 204, 218; Hoke *v.* United States, 227 U. S. 308, 320; Caminetti *v.* United States, 242 U. S. 470, 491; United States *v.* Hill, 248 U. S. 420, 423; Mitchell *v.* United States, 313 U. S. 80. Cf. The Federal Kidnaping Act of 1932, U. S. C., Title 18, §§ 408a-408c. It is immaterial whether or not the transportation is commercial in character. See Caminetti *v.* United States, *supra*.

affect interstate commerce. *California* v. *Thompson*, 313 U. S. 109, 113. The issue presented in this case, therefore, is whether the prohibition embodied in Section 2615 against the "bringing" or transportation of indigent persons into California is within the police power of that State. We think that it is not, and hold that it is an unconstitutional barrier to interstate commerce.

The ~~enormity and complexity of the~~ social and economic dislocation which this statute reflects is a matter of common knowledge and concern. We are not unmindful of it. We appreciate that the spectacle of large segments of our population constantly on the move has given rise to urgent demands upon the ingenuity of government. Both the brief of the Attorney General of California and that of the Chairman of the Select Committee of the House of Representatives of the United States as *amicus curiae* have sharpened this appreciation. The State asserts that the huge influx of migrants into California in recent years has resulted in problems of health, morals, and especially finance, the proportions of which are staggering. It is not for us to say that this is not true. We have repeatedly and recently affirmed, and we now reaffirm, that we do not conceive it our function to pass upon "the wisdom, need, or appropriateness" of the legislative efforts of the States to solve such difficulties. *See Olsen* v. *Nebraska*, 313 U. S. 236, 246.

But this does not mean that there are no boundaries to the permissible area of State legislative activity. There are. And none is more certain than the prohibition against attempts on the part of any single State to isolate itself from difficulties common to all of them by restraining the transportation of persons and property across its borders. It is frequently the case that a State might gain a momentary respite from the pressure of events by the simple expedient of shutting its gates to the outside world. But, in the words of Mr. Justice Cardozo: "The Constitution was framed under the dominion of a political philosophy less parochial in range. It was framed upon the theory that the peoples of the several States must sink or swim together, and that in the long run prosperity and salvation are in union and not division." *Baldwin* v. *Seelig*, 294 U. S. 511, 523.

It is difficult to conceive of a statute more squarely in conflict with this theory than the Section challenged here. Its express purpose and inevitable effect is to prohibit the transportation of indigent persons across the California border. The burden upon

interstate commerce is intended and immediate; it is the plain and sole function of the statute. Moreover, the indigent non-residents who are the real victims of the statute are deprived of the opportunity to exert political pressure upon the California legislature in order to obtain a change in policy. *South Carolina Highway Department* v. *Barnwell Bros.*, 303 U. S. 177, 185, n. 2. We think this statute must fail under any known test of the validity of State interference with interstate commerce.

It is urged, however, that the concept which underlies Section 2615 enjoys a firm basis in English and American history.[2] This is the notion that each community should care for its own indigent, that relief is solely the responsibility of local government. Of this it must first be said that we are not now called upon to determine anything other than the propriety of an attempt by a State to prohibit the transportation of indigent non-residents into its territory. The nature and extent of its obligation to afford relief to newcomers is not here involved. We do, however, suggest that the theory of the Elizabethan poor laws no longer fits the facts. Recent years, and particularly the past decade, have been marked by a growing recognition that in an industrial society the task of providing assistance to the needy has ceased to be local in character. The duty to share the burden, if not wholly to assume it, has been recognized not only by State governments, but by the Federal government as well. The changed attitude is reflected in the Social Security laws under which the Federal and State governments cooperate for the care of the aged, the blind and dependent children. U. S. C., Title 42, §§ 301-1307, esp. §§ 301, 501, 601, 701, 721, 801, 1201. It is reflected in the works programs under which work is furnished the unemployed, with the States supplying approximately 25% and the Federal government approximately 75% of the cost. See, *e. g.*, Joint Resolution of June 26, 1940, c. 432, § 1(d), 76th Cong., 3rd Sess., 54 Stat. 611, 613. It is further reflected in the Farm Security laws, under which the entire cost of the relief provisions is borne by the Federal government. *Id.*, at §§ 2(a), 2(b), 2(d).

Indeed the record in this very case illustrates the inadequate basis in fact for the theory that relief is presently a local matter. Before leaving Texas, Duncan had received assistance from the

[2] See Hirsch, H. M., *Our Settlement Laws* (N. Y. Dept. of Social Welfare, 1933), *passim*.

Works Progress Administration. After arriving in California he was aided by the Farm Security Administration, which, as we have said, is wholly financed by the Federal government. This is not to say that our judgment would be different if Duncan had received relief from local agencies in Texas and California. Nor is it to suggest that the financial burden of assistance to indigent persons does not continue to fall heavily upon local and State governments. It is only to illustrate that in not inconsiderable measure the relief of the needy has become the common responsibility and concern of the whole nation.

What has been said with respect to financing relief is not without its bearing upon the regulation of the transportation of indigent persons. For the social phenomenon of large-scale interstate migration is as certainly a matter of national concern as the provision of assistance to those who have found a permanent or temporary abode. Moreover, and unlike the relief problem, this phenomenon does not admit of diverse treatment by the several States. The prohibition against transporting indigent non-residents into one State is an open invitation to retaliatory measures, and the burdens upon the transportation of such persons become cumulative. Moreover, it would be a virtual impossibility for migrants and those who transport them to acquaint themselves with the peculiar rules of admission of many states. "This Court has repeatedly declared that the grant [the commerce clause] established the immunity of interstate commerce from the control of the States respecting all those subjects embraced within the grant which are of such a nature as to demand that, if regulated at all, their regulation must be prescribed by a single authority." *Milk Control Board* v. *Eisenberg Farm Products*, 306 U. S. 346, 351. We are of the opinion that the transportation of indigent persons from State to State clearly falls within this class of subjects. The scope of Congressional power to deal with this problem we are not now called upon to decide.

There remains to be noticed only the contention that the limitation upon State power to interfere with the interstate transportation of persons is subject to an exception in the case of "paupers". It is true that support for this contention may be found in early decisions of this Court. In *City of New York* v. *Miln*, 11 Pet. 103, at 143, it was said that it is "as competent and as necessary for a State to provide precautionary measures against the moral pestilence of paupers, vagabonds, and possibly convicts, as it is to guard against

the physical pestilence which may arise from unsound and infectious articles imported . . . .'' This language has been casually repeated in numerous later cases up to the turn of the century. See, *e. g.*, *Passenger Cases*, 7 How. 283, 426 and 466-467; *Railway Company* v. *Husen*, 95 U. S. 465, 471; *Plumley* v. *Massachusetts*, 155 U. S. 461, 478; *Missouri, Kansas and Topeka Ry.* v. *Haber*, 169 U. S. 613, 629. In none of these cases, however, was the power of a State to exclude ''paupers'' actually involved.

Whether an able-bodied but unemployed person like Duncan is a ''pauper'' within the historical meaning of the term is open to considerable doubt. See 53 Harvard L. Rev. 1031, 1032. But assuming that the term is applicable to him and to persons similarly situated, we do not consider ourselves bound by the language referred to. *City of New York* v. *Miln* was decided in 1836. Whatever may have been the notion then prevailing, we do not think that it will now be seriously contended that because a person is without employment and without funds he constitutes a ''moral pestilence''. Poverty and immorality are not synonymous.

We are of the opinion that Section 2615 is not a valid exercise of the police power of California, that it imposes an unconstitutional burden upon interstate commerce, and that the conviction under it cannot be sustained. In the view we have taken it is unnecessary to decide whether the Section is repugnant to other provisions of the Constitution.

Reversed.

A true copy.

Test:

Clerk, Supreme Court, U. S.

SUPREME COURT OF THE UNITED STATES.

No. 17.—October Term, 1941.

Fred F. Edwards, Appellant,
vs.
The People of the State of California.
} Appeal from the Superior Court of the State of California in and for the County of Yuba.

[November 24, 1941.]

Mr. Justice Douglas, concurring.

I express no view on whether or not the statute here in question runs afoul of Art. I, Sec. 8 of the Constitution granting to Congress the power "to regulate Commerce with foreign Nations, and among the several States". But I am of the opinion that the right of persons to move freely from State to State occupies a more protected position in our constitutional system than does the movement of cattle, fruit, steel and coal across state lines. While the opinion of the Court expresses no view on that issue, the right involved is so fundamental that I deem it appropriate to indicate the reach of the constitutional question which is present.

The right to move freely from State to State is an incident of *national* citizenship protected by the privileges and immunities clause of the Fourteenth Amendment against state interference. Mr. Justice Moody in *Twining* v. *New Jersey*, 211 U. S. 78, 97, stated, "Privileges and immunities of citizens of the United States . . . are only such as arise out of the nature and essential character of the National Government, or are specifically granted or secured to all citizens or persons by the Constitution of the United States." And he went on to state that one of those rights of *national* citizenship was "the right to pass freely from State to State". *Id.*, p. 97. Now it is apparent that this right is not specifically granted by the Constitution. Yet before the Fourteenth Amendment it was recognized as a right fundamental to the national character of our Federal government. It was so decided in 1867 by *Crandall* v. *Nevada*, 6 Wall. 35. In that case this Court struck down a Nevada tax "upon every person leaving the State"

by common carrier. Mr. Justice Miller writing for the Court held that the right to move freely throughout the nation was a right of *national* citizenship. That the right was implied did not make it any the less "guaranteed" by the Constitution. *Id.*, p. 47. To be sure, he emphasized that the Nevada statute would obstruct the right of a citizen to travel to the seat of his national government or its offices throughout the country. And see *United States* v. *Wheeler*, 254 U. S. 281, 299. But there is not a shred of evidence in the record of the *Crandall* case that the persons there involved were en route on any such mission any more than it appears in this case that Duncan entered California to interview some federal agency. The point which Mr. Justice Miller made was merely in illustration of the damage and havoc which would ensue if the States had the power to prevent the free movement of citizens from one State to another. This is emphasized by his quotation from Chief Justice Taney's dissenting opinion in the *Passenger Cases*, 7 How. 283, 492: "We are all citizens of the United States; and, as members of the same community, must have the right to pass and repass through every part of it without interruption, as freely as in our own States." Hence the *dictum* in *United States* v. *Wheeler*, *supra*, p. 299, which attempts to limit the *Crandall* case to a holding that the statute in question directly burdened "the performance by the United States of its governmental functions" and limited the "rights of the citizens growing out of such functions," does not bear analysis.

So, when the Fourteenth Amendment was adopted in 1868 it had been squarely and authoritatively settled that the right to move freely from State to State was a right of *national* citizenship. As such it was protected by the privileges and immunities clause of the Fourteenth Amendment against state interference. *Slaughter House Cases*, 16 Wall. 36, 74, 79. In the latter case Mr. Justice Miller recognized that it was so "protected by implied guarantees" of the Constitution. *Id.*, p. 79. That was also acknowledged in *Twining* v. *New Jersey*, *supra*. And Chief Justice Fuller in *Williams* v. *Fears*, 179 U. S. 270, 274, stated: "Undoubtedly the right of locomotion, the right to remove from one place to another according to inclination, is an attribute of personal liberty, and the right, ordinarily, of free transit from or through the territory of any State is a right secured by the Fourteenth Amendment and by other provisions of the Constitution."

In the face of this history I cannot accede to the suggestion (*Helson* v. *Kentucky*, 279 U. S. 245, 251; *Colgate* v. *Harvey*, 296 U. S. 404, 444) that the commerce clause is the appropriate explanation of *Crandall* v. *Nevada*, *supra*. Two of the Justices in that case expressly put the decision on the commerce clause; the others put it on the broader ground of rights of *national* citizenship. Mr. Justice Miller stating that "we do not concede that the question before us is to be determined" by the commerce clause. *Id.*, p. 43. On that broader ground it should continue to rest.

To be sure, there are expressions in the cases that this right of free movement of persons is an incident of *state* citizenship protected against discriminatory state action by Art. IV, Sec. 2 of the Constitution. *Corfield* v. *Coryell*, 4 Wash. C. C. 371, 381; *Paul* v. *Virginia*, 8 Wall. 168, 180; *Ward* v. *Maryland*, 12 Wall. 418, 430; *United States* v. *Wheeler*, *supra*, pp. 298-299. Under the *dicta* of those cases the statute in the instant case would not survive, since California is curtailing only the free movement of indigents who are non-residents of that State. But the thrust of the *Crandall* case is deeper. Mr. Justice Miller adverted to *Corfield* v. *Coryell*, *Paul* v. *Virginia*, and *Ward* v. *Maryland*, when he stated in the *Slaughter House Cases* that the right protected by the *Crandall* case was a right of *national* citizenship arising from the "implied guarantees" of the Constitution. 16 Wall. at pp. 75-79. But his failure to classify that right as one of *state* citizenship protected solely by Art. IV, sec. 2, underscores his view that the free movement of persons throughout this nation was a right of *national* citizenship. It likewise emphasizes that Art. IV, Sec. 2, whatever its reach, is primarily concerned with the incidents of residence (the matter involved in *United States* v. *Wheeler*, *supra*) and the exercise of rights within a State, so that a citizen of one State is not in a "condition of alienage when he is within or when he removes to another State." *Blake* v. *McClung*, 172 U. S. 239, 256. Furthermore, Art. IV, Sec. 2, cannot explain the *Crandall* decision. The statute in that case applied to citizens of Nevada as well as to citizens of other States. That is to say Nevada was not "discriminating against citizens of other States in favor of its own." *Hague* v. *Committee for Industrial Organization*, 307 U. S. 496, 511 and cases cited. Thus it is plain that the right of free ingress and egress rises to a higher constitutional dignity than that afforded by *state* citizenship.

The conclusion that the right of free movement is a right of *national* citizenship stands on firm historical ground. If a state tax on that movement, as in the *Crandall* case, is invalid, *a fortiori* a state statute which obstructs or in substance prevents that movement must fail. That result necessarily follows unless perchance a State can curtail the right of free movement of those who are poor or destitute. But to allow such an exception to be engrafted on the rights of *national* citizenship would be to contravene every conception of national unity. It would also introduce a caste system utterly incompatible with the spirit of our system of government. It would permit those who were stigmatized by a State as indigents, paupers, or vagabonds to be relegated to an inferior class of citizenship. It would prevent a citizen because he was poor from seeking new horizons in other States. It might thus withhold from large segments of our people that mobility which is basic to any guarantee of freedom of opportunity. The result would be a substantial dilution of the rights of *national* citizenship, a serious impairment of the principles of equality. Since the state statute here challenged involves such consequences it runs afoul of the privileges and immunities clause of the Fourteenth Amendment.

Mr. Justice BLACK and Mr. Justice MURPHY join in this opinion.

SUPREME COURT OF THE UNITED STATES.

No. 17.—October Term, 1941.

Fred F. Edwards, Appellant, *vs.* The People of the State of California.	Appeal from the Superior Court of the State of California in and for the County of Yuba.

[November 24, 1941.]

Mr. Justice Jackson, concurring.

I concur in the result reached by the Court, and I agree that the grounds of its decision are permissible ones under applicable authorities. But the migrations of a human being, of whom it is charged that he possesses nothing that can be sold and has no wherewithal to buy, do not fit easily into my notions as to what is commerce. To hold that the measure of his rights is the commerce clause is likely to result eventually either in distorting the commercial law or in denaturing human rights. I turn, therefore, away from principles by which commerce is regulated to that clause of the Constitution by virtue of which Duncan is a citizen of the United States and which forbids any state to abridge his privileges or immunities as such.

This clause was adopted to make United States citizenship the dominant and paramount allegiance among us. The return which the law had long associated with allegiance was protection. The power of citizenship as a shield against oppression was widely known from the example of Paul's Roman citizenship, which sent the centurion scurrying to his higher-ups with the message: "Take heed what thou doest: for this man is a Roman." I suppose none of us doubts that the hope of imparting to American citizenship some of this vitality was the purpose of declaring in the Fourteenth Amendment: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States . . . ."

But the hope proclaimed in such generality soon shriveled in the process of judicial interpretation. For nearly three-quarters of a century this Court rejected every plea to the privileges and immunities clause. The judicial history of this clause and the very real difficulties in the way of its practical application to specific cases have been too well and recently reviewed to warrant repetition.[1]

While instances of valid "privileges or immunities" must be but few, I am convinced that this is one. I do not ignore or belittle the difficulties of what has been characterized by this Court as an "almost forgotten" clause. But the difficulty of the task does not excuse us from giving these general and abstract words whatever of specific content and concreteness they will bear as we mark out their application, case by case. That is the method of the common law, and it has been the method of this Court with other no less general statements in our fundamental law. This Court has not been timorous about giving concrete meaning to such obscure and vagrant phrases as "due process," "general welfare," "equal protection," or even "commerce among the several States." But it has always hesitated to give any real meaning to the privileges and immunities clause lest it improvidently give too much.

This Court should, however, hold squarely that it is a privilege of citizenship of the United States, protected from state abridgment, to enter any state of the Union, either for temporary sojourn or for the establishment of permanent residence therein and for gaining resultant citizenship thereof. If national citizenship means less than this, it means nothing.

The language of the Fourteenth Amendment declaring two kinds of citizenship is discriminating. It is: "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside." While it thus establishes national citizenship from the mere circumstance of birth within the territory and jurisdiction of the United States, birth within a state does not establish citizenship thereof. State citizenship is ephemeral. It results only from residence and is gained or lost therewith. That choice of residence was subject to local approval is contrary to the inescapable implications of the westward movement of our civilization.

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1 See dissenting opinion of Mr. Justice Stone in Colgate v. Harvey, 296 U. S. 404, 436, *et seq.*

Even as to an alien who had "been admitted to the United States under the Federal law," this Court, through Mr. Justice Hughes, declared that "He was thus admitted with the privilege of entering and abiding in the United States, and hence of entering and abiding in any State in the Union." *Truax* v. *Raich*, 239 U. S. 33, 39. Why we should hesitate to hold that federal citizenship implies rights to enter and abide in any state of the Union at least equal to those possessed by aliens passes my understanding. The world is even more upside down than I had supposed it to be, if California must accept aliens in deference to their federal privileges but is free to turn back citizens of the United States unless we treat them as subjects of commerce.

The right of the citizen to migrate from state to state which, I agree with Mr. Justice DOUGLAS, is shown by our precedents to be one of national citizenship, is not, however, an unlimited one. In addition to being subject to all constitutional limitations imposed by the federal government, such citizen is subject to some control by state governments. He may not, if a fugitive from justice, claim freedom to migrate unmolested, nor may he endanger others by carrying contagion about. These causes, and perhaps others that do not occur to me now, warrant any public authority in stopping a man where it finds him and arresting his progress across a state line quite as much as from place to place within the state.

It is here that we meet the real crux of this case. Does "indigence" as defined by the application of the California statute constitute a basis for restricting the freedom of a citizen, as crime or contagion warrants its restriction? We should say now, and in no uncertain terms, that a man's mere property status, without more, cannot be used by a state to test, qualify, or limit his rights as a citizen of the United States. "Indigence" in itself is neither a source of rights nor a basis for denying them. The mere state of being without funds is a neutral fact—constitutionally an irrelevance, like race, creed, or color. I agree with what I understand to be the holding of the Court that cases which may indicate the contrary are overruled.

Any measure which would divide our citizenry on the basis of property into one class free to move from state to state and another class that is poverty-bound to the place where it has suffered misfortune is not only at war with the habit and custom by which our country has expanded, but is also a short-sighted blow at the secur-

ity of property itself. Property can have no more dangerous, even if unwitting, enemy than one who would make its possession a pretext for unequal or exclusive civil rights. Where those rights are derived from national citizenship no state may impose such a test, and whether the Congress could do so we are not called upon to inquire.

I think California had no right to make the condition of Duncan's purse, with no evidence of violation by him of any law or social policy which caused it, the basis of excluding him or of punishing one who extended him aid.

If I doubted whether his federal citizenship alone were enough to open the gates of California to Duncan, my doubt would disappear on consideration of the obligations of such citizenship. Duncan owes a duty to render military service, and this Court has said that this duty is the result of his citizenship. Mr. Chief Justice White declared in the *Selective Draft Law Cases*, 245 U. S. 366, 378: "It may not be doubted that the very conception of a just government and its duty to the citizen includes the reciprocal obligation of the citizen to render military service in case of need and the right to compel it." A contention that a citizen's duty to render military service is suspended by "indigence" would meet with little favor. Rich or penniless, Duncan's citizenship under the Constitution pledges his strength to the defense of California as a part of the United States, and his right to migrate to any part of the land he must defend is something she must respect under the same instrument. Unless this Court is willing to say that citizenship of the United States means at least this much to the citizen, then our heritage of constitutional privileges and immunities is only a promise to the ear to be broken to the hope, a teasing illusion like a munificent bequest in a pauper's will.